

157 F. a

THE
LAW
OF
Obligations and Conditions,
OR

An Accurate TREATISE, where-
in is contained the whole Learning of the
LAW concerning Bills, Bonds, Conditions,
Statutes, Recognizances and Defeasances;
as also Declarations on Special Conditions,
and the Pleadings thereon, Issues, Judgments
and Executions, with many other useful
Matters relating thereto, digested under
their proper Titles.

To which is added

A TABLE of References to all the Declara-
tions and Pleadings upon Bonds, &c. now
extant.

ALSO

Another TABLE to the Forms of special Con-
ditions which lie scattered in our President
BOOKS. Being a Work necessary for all
that Study the Law, or follow the Practick
Part thereof. With an INDEX of the
Principal Matters therein contained.

By T. A. of Grays-Inn Esq.

LONDON, Printed for J. Malchoe at his
Shop in Vine-Court, Middle-Temple. 1693.



TO THE
STUDENTS
OF THE
Common Law.

GENTLEMEN,

I Have often admired, as well
at the Confidence as the scrib-
ling Fatigues of any particu-
lar Persons, who pretend to write
Abridgments of the whole Com-
mon Law of England; Non est
res unius ætatis; such Persons by

The Epistle.

an impertinent Citation of a Multitude of Cases, not duly examined, either raise a Confusion in the Minds of Students, or else soften them into a careless Humour; it being more easie to turn to Hughes or Shepherd, than to search into the true Reasons of the Judgment in Cases maturely reported; besides, these Persons are seldom curious about Declarations and Pleadings; their essential Forms and apt Notions, which is the very Soul of the Law, that plastica vis, without which all their Volumes are void of Life and regular Motion, a meer rudis indigestaq; moles.

Some indeed have merited well by their particular Treatises, and for that they have kept themselves to one Subject, have proved very useful.

This

The Epistle.

This particular Title which I here present to you, hath not been hitherto fully and designedly handled; and yet there is no Title more frequent in our Books than that of Obligations and Conditions. The Method I have used is as exact as a Treatise of this Nature is capable of; yet in this I have not been over-curious and systematical.

I have not treated at large on Arbitration Bonds; the Learning of Arbitraments being a large Title of it self, and Mr. March hath been very exact therein; and for the same Reason I have been very sparing about Bonds sued by or against Executors or Administrators; that being a peculiar Learning of it self, (though hitherto I confess but lamely handled.)

The Epistle.

I have added a Reference-Table of Declarations and Pleadings, both Ancient and Modern, a thing useful for entring Clerks, who may at any time compare their own Manuscripts with these.

I have also added a Table of special Conditions such as are extant, though that must generally be left to the Students own Improvement, as the nature of the Case will be ; and its very easie to change any Covenant into a Condition.

*Some Cases I have cited more largely for the benefit of such who may not have the Books at hand, but especially where the Reasons of the Resolutions are Learned and Curious ; and I have corrected some Cases which have been mistaken in some Reports, as Croke Eliz. and others : I have ventured to insert
many*

The Epistle.

many of the Cases reported by Mr. Keble, though in some of them I confess I am a little confounded, but they are set down in his own Words.

Gent. If this Piece prove useful to you either in, it self, or in instructing you in the Method of your Studies as to other Titles of Law, I have my Design; And if you please to pardon my Mistakes, it will lay a farther Obligation on your Humble Servant

J. A.

*The Names of the Books made use
of in the Table of Pleadings.*

A <i>Stons</i> Book of Entries in Quarto. Printed	} 1673
<i>Brownlows</i> Declarations and Pleadings, in English, 2 parts, 4to.	} 1653
<i>Brownlows</i> Declarations and Pleadings, in Latin, fol.	} 1693
<i>Browns</i> Entries, in 2 parts, fol.	1675
— <i>Modus Intrandi</i> , 8vo.	1687
<i>Cokes</i> Entries, fol.	1671
<i>Clarks</i> Manual, 8vo.	1678
<i>Hernes</i> Pleader, Eng. fol.	} 1685
<i>The Book of Entries</i> , fol.	
<i>Robinsons</i> Entries, fol.	} 1670
<i>Rastals</i> Entries, fol.	
<i>Placita Generalia & Specialia</i> , 8vo.	1674
<i>Tompsons</i> Entries, fol.	1674
<i>Vidians</i> Entries, fol.	1684
<i>Winches</i> Entries, fol.	1680

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THE LAW OF Obligations and Conditions.

The Nature of an Obligation, and with what respect it stands in the Eye of the LAW.

AN Obligation is taken in the Common Law for a Bond, containing a Penalty with a Condition for payment of Money, or to do or suffer some Act or Thing, &c. And a Bill is a single Bond without a Condition. *Co. Lit. 172. a.* How they differ farther, *vide infra Tit. Bill.*

Its not a Debt simply by the Obligation, but the performance or breach of the Condition makes it to be a Debt, for the Obligation is guided by the Condition, *Telro. pag. 192. 1 Brownl. p. 109. Neal and Sheffield.*

A single Obligation is taken most in favour of the Obligee; but an Obligation with a Condition is taken most in favour of the Obligor, *10 H. 7. c. 16.*

Its a Debt presently upon the sealing and delivery; it is *debitum in presenti*, though *solvendum in futuro*.

It is a *chose in Action*. Therefore if a Bond be made for payment of Money to a Feme Solé, Feme takes Husband and dies, the Debt due upon the Bond becomes not a Debt due to the Husband, but

to him that administers, *Stiles Rep.* 205. *Cowley and Lockson.* *Noy* 149. *Norton and Glover.*

A Bond is to be paid before a Statute for performance of Covenants not broken, *5 Rep.* 28. *Harrissons Case.* When none of them were, nor ever perhaps shall be broken, such possibilities shall not bar present Debts, *Cro. Eliz.* p. 467.

A Bond for a long continuing Duty, will not hinder payment of a Legacy, *2 Keble* 759. *Davis Case.*

It is a Debt where the Obligation is (at the time of the decease of the Obligee) and not where the Obligee inhabits, and accordingly shall be accounted *bona notabilia*, *1 Sanders* 274. *Cro. Eliz.* *Byrons Case.*

By grant of *omnia bona & catalla felonum* Obligations do pass by the Kings Grant; but by a particular Persons Grant of *omnia bona & catalla* Obligations do not pass, *1 Keble* 417, 467, 497. Corporation of *Souhampton* against *Richards*, *1 Siderfin* 142. *mesme Case.*

If a Man grant to *J. S.* all his Goods and Chattels in such a Box, and in this Box are Obligations, there the Obligations pass, by reason of the special Reference exprest by the Grant, *Yelov.* p. 69. *Chanel's Case.*

Two Executors to *J. S.* one Executor had a Bond wherein *A. B.* was bound to their Testator, he in satisfaction of his own proper Debt to *C. D.* by word *dedit & deliberavit* the Obligation to *C. D.* and dies, the Plaintiff being surviving Executor, brings Detinue against *C. D.* per three Justices, the Executor may give away the Instrument, as well as release a Debt; but its

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scribed to the Deed before the sealing, its a good part; if after sealing, its a Condition *per Crew.* Bulst. 3. p. 302. *Tompson and Butcher.*

As for Declarations on Bills Obligatory, and Pleadings, see in their proper places.

In respect of { Obligors,
 { Obligees.

I shall consider Obligors { What persons may make Obligations.
 { By what Name.
 { Who are bound though not named.

What persons may or may not make Obligations.

EVery natural Person or Body politick not prohibited by the Law may bind themselves.

But some persons are incapacitated by the Law to bind themselves, and some Obligations are void, and others only voidable.

If a Monk make an Obligation, it is void, 14 H. 4. 30.

Feme.

IF a Feme Covert make an Obligation it is void, 14 H. 4. 30. and she shall plead she was Feme Covert, and conclude *assint non est factum*, because it is void: But an Infant shall not do so, because his Bond was only voidable, and he shall conclude *Judgment si actio*.
1 H.

1 H. 7. 15. *Donn's Case. Vid. pluis postea sub tit. plead. non est factum.*

Debt brought against *J. S. and Elianor* his Wife upon Bond made by the Wife. Defendant pleads *quod tempore confectionis*, and shews the day she was Feme Covert. The Plaintiff confesseth this, but saith, she sealed the same Deed the same day of her marriage before the Espousals in the morning. Defendant demurs: The Plaintiff had Judgment, 2 *Rolls Rep.* 431. *Jackson's Case.*

Debt on Bond by Baron and Feme. The Defendant pleads the Wife had another Husband living. The Plaintiff replies; the Wife *ad annos nubiles* disagreed to the former marriage, and good, *Moor n.* *Warner and his Wife versus Babbington.*

Feme Obligor of full age takes Baron within age, in Debt on Obligation, they pray his age, but demurred, *Noy p. 69.*

Infants.

IF an Infant make an Obligation, this is not void, but voidable.

If an Infant seal a Bond, and he be sued thereon, he cannot plead *non est factum*; but it must be avoided by special pleading, and conclude *Judgment si actio*; for the Bond was not void but voidable, 5 *Rep.* 119. *Whelpdale's Case*, 1 H. 7. 15. *Donn's Case, Vid. postea.*

An Obligation or Covenant of an Infant for his Apprentiship shall not bind him, neither at Common Law, nor by the words of 5 *Eliz.* yet the Indenture shall bind him, because he is compellable

Obligations and Conditions. 5

ton, *Yelv.* 225. *contra.* *Octogenta libris*, with Condition of payment of 40 *l.* it was adjudged good for *octogint.* though it is *minus Latinum*, 10 *Rep.* 133. *Fitzbughes Case* cited in *James Osborns Case*, *Hob.* p. 19. *contra.* The Record of this Case is set forth at large in *Hobart*, but there is no mention of the Condition, the Obligation was in *septuaginta libris*, with Condition of payment of 350 *l.* and good, 10 *Rep.* 133. cited in *James Osborns Case*, so in *viginti libris*, this is a good Obligation for 20 *l.* in *Osborns Case*.

If a Man be bound in *quingint. duabus libris*, this is a good Obligation for 52 *l.* the Condition being for the payment of 36 *l.* it cannot be taken for 500 *l.* because it is not *gento*; but it shall be taken as an abbreviation of *quinquagint.* this was adjudged upon a special Verdict, where the Plaintiff declared upon a Bond *de quinquagint. duabus libris*, and the Defendant pleaded *non est factum*, *Cro. M.* 11 *Fac.* 416, 418. *Downs* and *Haithwait*.

A Man is bound in *octogesimo libris* (*pro octogint. libris*) its good, 2 *Rolls Abr.* 147. *Moor n.* 1123. 1 *Brownl.* 60. *Vernon* and *Onslow*, in *quinquagesimis libris pro quinquagint. libris*, good, being all of one sense; so *fiftieth* and *fifty pounds*, *Cro. M.* 9 *Fac.* *Els* and *Clark*.

Debt upon a Bill Obligatory for *thirty two pounds*, and upon Oyer of the Bill, it was *thirty two pounds*, adjudged *pro quer.* *Cro. Fac.* 607. *Hulbert* and *Long*.

The Obligation was in *centem libris*, and upon *non est factum* pleaded on a special Verdict; the question was, whether it was his Deed or not, be-

cause

cause it was *centum* (for where a Deed is void *non est factum* is a good Plea) but adjudged it was all one with *centum*, and the Condition shewed it to be an 100 l. *Stiles Hill*. 1653. fol. 438. *Torkhurst* and *Scot*.

One is bound in *viginti nobilis*, its good, 2 *Rolls Abr.* 146. *Cro. Jac.* 203. 1 *Brownl.* 95. *Durbin* and *Vaughan*.

Debt is brought for 600 l. on Bond, on Oyer it was *sexaginta*, for this Variance the Defendant demurs; *per Cur.* this Obligation doth not warrant the Declaration, because it is another Sum, and cannot be taken for *sexcenti*. *Cro. M. & Jac.* fol. 203. *Greggs Case*, One is bound in *sexginti libris* for *sexcenti libris*, this is not good, its not a Latin word, *Relv. p.* 105. 2 *Rolls Abr.* 147. *Grey* and *Davis*. In *terengentate liberis* its a void Bond, for both words are insensible, *Cro. M.* 18 *Jac.* 603. *Hills* and *Cooper*. In *quingenta libris* is ill, but there is a good remedy in Equity on this mistake, 3 *Keble* 644. *P.* 28 *Car.* 2. *Strange* and *Greenhill*.

Note, There is a difference when the Condition is to pay a Sum of Money, for then the intent of the Sum may more easily be collected, *ut supra*, and a Condition to do a Collateral Act. Debt on Bond *de quingent. libris*; Defendant demands Oyer, and it was *inquingent. libris*, the Condition was to do a collateral Act; Defendant pleads an insufficient Plea, and the Plaintiff demurring thereon prayed his Judgment: but because the Plaintiff had declared upon a Bond that appeared to be variant, and the word was insensible, and

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and had not any other thing to expound it, *per Cur.* the Obligation was void, and Writ shall abate, *Hill. 4 Jac. p. 146. 2 Rolls Abr. 146. Yelv. 33. Parry and Dale. So,*

A. is bound in a Bail Bond *pro quadragent. libris*, the Plaintiff declares *pro quadragint. libris*, for this variance Defendant demurs to the Declaration, *per Cur. genta*, refers to *centum*, and so its rather 400 *l.* than 40 *l.* and the Condition being collateral doth not shew the intent of the Parties; adjudged against the Plaintiff, *Stiles p. 247, 257. 2 Rolls Abr. 147, 148. Feilder and Tovey.* So Condition to appear was *no demgint.* (for *nonagint.*) and the Defendant pleaded in Abatement, 3 *Keble 255. Scotts Case.*

An English Bill is made *seventeen* for *seventeen* pounds, and adjudged good, in 10 *Rep. 113. James Osborns Case.*

Tenerie & firmit. Obligarie, yet good, *Yelv. 193. Dodson and Keyes.*

In viginti litteris (for *libris*) its void, *Partrose's Case* cited in *Cro. Jac. 603. Cooper and Hills Case*, But the Attorney who made the Bond was committed to the Fleet for *Knavery.*

In viginti lib'is, with a dash, its an insufficient Bond; *liba* signifies a Cake, and the dash doth not help it, *Noy p. 109, Sherret and Mallet.*

One is bound in *viginti liveris* (for *libris*) it is not good, *Cro. Jac. fol. 203. cited in Durbin and Vaughans Case.*

A Man is bound in an Obligation, *in libro*, without saying how much, its a void Obligation, *Yelv. p. 225. in Loggins and Tethbertons Case.*

An Obligation was made for the payment of 10 l. 8 s. and 8 (not saying pence) Action of Debt lies for the 10 l. 8 s. 1 *Brownl. Rep. p. 61.*

Obligation to pay 5 l. *puri auri*, i. e. fine gold, *Quar. 9 H. 7. 6.*

In respect of the Frame of the Obligation or Bill.

NOte the Opinion in *Yelverton, Dodson* and *Key's Case*, p. 193. When the parties and the sum are well expressed to the Conscience of the Judges, such words by which the party doth intend to bind himself shall serve.

Memorandum, *That I Ben, have received 20 l. of C. which 20 l. I Ben. promise to pay to D. in witness whereof I have bereunto set my Seal,* this is a good Obligation, 22 E. 4. 22. cited in *Roll. 2. Abr. 146.* If it be, *I shall pay to you 20 l. In witness, &c. I put my Seal,* its a good Obligation, 22 E. 4. 22. So these words, *Concedo vobis, &c.* makes a good Bond, 22 E. 4. 22. *Hatley's Case.* If a Man by his Deed, say, that I owe to C. 20 l. to be paid at Easter next, or, I had of C. 20 l. of which I owe him 10 l. or, to be repaid him again; or, I A. B. do bind myself to C. that he shall receive 20 l. and such like, these are all binding.

Obligation was made in such manner: *Be it known to all Men, that I doe owe unto Oliver 26 l. to be paid such a sum at Michaelmas, and such a sum at Lady-day;* and in truth the particular Sums do not amount unto 26 l. this was not a good Obligation for 26 l. *Rolls 2 Rep. Tr. 18 Jac. B. R. Oliver's Case.*

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If *A.* acknowledge by a Bill Obligatory himself to owe 10 *l.* to *B.* to be paid at a day to come; and by the same Bill binds him and his Heirs in 20 *l.* and saith not, to whom he is bound; yet it is good, and it shall be intended to be bound to *B.* adjudged upon demurrer; *Rolls 2 Abr. tit. Oblig. p. 148. Franklin and Turner.*

Obligation was written in this form: *Know all Men, &c. that I H. W. am bound to W. Gore, &c. in the Sum of, &c. for the payment of which Sum I give full power and authority to the said Gore to levy the said Sum upon the profits of, &c. until the same be paid.* Defendant pleads, the Plaintiff had levied part of the said Sum, and shews not how, ill Plea. *Per Curiam*, the Plaintiff may at his liberty bring his Action upon the said Obligation, or levy the said Monies according to the Clause aforesaid, 3 *Leon. fo. 223. Gore and Winckfeild.*

An Obligation of 200 *l.* to two *Solvend.* the one hundred pound to the one, and the other to the other; it is a void *Solvend.* 18 *Eliz. Dyer 350. Hob. p. 172. in Stukeley's Case*; yet *Brownlow* seems *contra*, 2 *Rep. p. 207.* Obligation to two, *solvend.* 10 *l.* to the one, and 10 *l.* to the other; both ought to join in Debt on this Obligation. But an Obligation made to three, *solvend.* to one of them, is good.

Memorandum, *I John B. have agreed to pay J.S. 20 l. though it be in the Preterperfect Tense,* and wants the word *In cujus rei testimonium*; yet is a good Bill, 1 *Leon. p. 25. Bedowes Case.* And *per Wray dedi & concessi* are used as words of a present Conveyance.

This

*This Bill witnesseth, that I R. S. have received of T. P. 40 l. to the use of Robert and Jane Shaw Children of, &c. equally to be divided between them; which Sum I confess to have received to the uses aforesaid, and the same to repay again at such a time, as shall be thought best for the profit of the said R. S. and J. S. R. S. dies intestate, his Administrator brings Debt for 20 l. and counts that the Defendant by his Bill Obligatory (shewn in Court) acknowledged *se recepisse* 20 l. of T. P. to the use of the intestate, *solvend. at such a time, quod videtur opportunum pro proficuo* of R. S. the intestate, and shews that at such a time *videbatur opportunum, &c.* and he demanded it. Upon Oyer, the Defendant demanded Judgment of the Writ and Count as not warranted by this Bill; *per Curiam.* 1. This is a good Bill Obligatory, and shall be intended to be delivered to the use of the Plaintiffs intestate; the Plaintiff hath supposed it in his Declaration, and the Defendant hath admitted it, otherwise he ought to have pleaded *non est factum.* 2. The Receipt of this Mony shall be made to R. S. and J. S. and not to T. P. 3. It is as several Bills of 20 l. apiece, and are divided Debts, by the words equally to be divided, and so shall not survive, *Crook M. 41 Elix. fo. 729. Shaw and Sherwood.**

Be it known, &c. I Tho. J. do bind my self to J. M. to pay unto him all such Monies as my Brother owes him. In witness, &c. And in the end of the Bill was written, that Will. the Brother of Tho. J. owed to M. 40 l. with this Averment in the Declaration; it is a good Bill and Action lies; for it is reduced to a certainty, Crook Elix. p. 361.

Morgan

Morgan and Johnson, and yet p. 758. *dubitat.*

Be it known that I Tho. D. do owe unto A.B. 50 l. to be paid him, 10 l. at such a day, and so at five several days 10 l. until 50 l. were paid; and for payment hereof I bind me, &c. in 10 l. nomine pænæ. Obligee after five days past brings Debt for 50 l. and good; for it is a several Bill for the 50 l. and a Bill also for the 10 l. *Crook Eliz.* p. 771. *Anonymus.*

Memorandum, I do owe and promise to pay to A. 10 l. at any time after the Feast, &c. when she shall require it; for payment whereof I bind my self, &c. to J. H. by these Presents. It is a good Bill to A. by the words of the first part, and the words which oblige him to J. H. are void, *Crook Eliz.* 886. *Hardman's Case.*

Bill Obligatory written in a Book with the Defendants Hand and Seal to it, good, *Crook Eliz.* p. 613. *Fox and Wright.*

Be it known, that I do owe unto P. 14 l. to be paid at, &c. together with 6 l. which I owe him upon Bill and Recognizance subscribed under my Hand. Plaintiff brings Debt for 20 l. and adjudged against him, because the Bill made him Debtor only for 14 l. *Moor n. 670. Parry and Woodward.*

The Defendant by Deed acknowledged he had received of T. 40 l. to the use of his Master, to be paid at Michaelmas following, and sealed it: In Debt the Defendant demurs, supposing this was only a Deed testifying the Receipt to anothers use, and not to charge himself. *Curia contra;* for the Clause of the repayment is general. *Aliter,* If the Bill had recited the Repayment to be made by the Master, then

then it had been but a Receipt, and merely to anothers use, *Yelv. p. 137, 147. Talbot and Godbolt.*

Now I shall put a Case or two, how words written in a Bill after the *In cujus rei Testimonium* shall be expounded whether as parcel of the Bill or not.

My Lord Cook in *Hamond and Fethro's Case*, 1 *Brownl. Rep. 59.* held that whatsoever comes after these words (*In witness, &c.*) is no part of the Bill, but may be a Condition, and must be pleaded and not demurred upon.

Debt upon a Bill of 6 *l.* 13 *s.* 4 *d.* and upon Oyer, after the *In cujus rei Testimonium*, this Clause was added in nature of a Proviso; *Provided that the said 6 l. 13 s. 4 d. is not to be paid until such an one hath had a Recovery in such an Action or Suit, which he hath hanging against the Plaintiff upon a Bond of 200 *l.* conditioned for saving harmless, or hath made an end of the said Suit.* Conclusion was, *dat' iisdem die & anno*; and all this upon Oyer entred of Record. Defendant pleads, no end was made of the said Suit, and so the time of payment not yet come. The Plaintiff replies a composition of 20 *l.* in discharge of the said Suit; and Issue *pro Quer' per Curiam* the 20 *l.* may be given in satisfaction of the said Suit, though not of the Obligation. This Proviso is part of the Bill; for it expressed the time of payment of the 6 *l.* 13 *s.* 4 *d.* If the Proviso be no parcel of the Bill then it is in nature of a Condition. *Per Dodderidge*, Its parcel of the Bill, and the words *In cujus rei, &c.* are not necessary to a Deed. If it be put in and sub-

scribed

Obligations and Conditions.

3

a Devastavit in him, Cro. El. 478, 496. *Kellock* and *Nicholson*.

By what words an Obligation may be made, and what shall be good, and what not.

In respect of { *False Latin or English.*
 { *The Frame of the Obligation.*

As to *Faux Latin* or omissions.

THE Law doth make a reasonable and favourable construction of Mens Deeds and Conveyances, and will support them (as much as it may) according to the intent of the Parties; but it abhors Non-sense, Repugnancy and Insensibility, and will reject any thing which introduceth Incertainty and Confusion, upon which no solid Judgment or weighty Authority can be founded.

I shall briefly lay down two or three Rules or Advertisements contained in our Books, about the construction of *Faux Latin* in Obligations, and then come to particular Cases.

Faux Latin shall abate a Writ, for that the Party may purchase a new Writ, but it shall not destroy an Obligation, for the Party cannot have a new Obligation when he will, 9 H.7. 16. 10 H.7. Telv. p. 194. in *Dodsons Case*, 1 *Brownl. Rep.* 110. so in *James Osborns Case*, 10 Rep. 133. *Faux Latin* nor *Faux English* shall not make void a Bond or other Deed, when the meaning of the Party appeareth.

An Obligation shall not be avoided for vicious Writing or Incongruity, the Bond was *Jobem A.* without a dash, yet good, and the Declaration upon it was *Johannes H. Cro. Car. p. 418. Down* and *Haithwait.*

There are two principal Things contained in an Obligation: 1. The Parties. 2. The Sum in which one Party is bound; and when both these are sufficiently expressed to the Conusance of the Judges, as the Obligor and Obligee are well named, and the Sum well expressed, or easily without straining understood to be the intent, and by such words by which the Party doth intend to bind himself, it shall serve, if it be well executed, *Yelw. p. 193. Brownl. Rep. 110. Dodson and Keyes,* and therefore in that *Casetenerie & firmit. obligarie,* was held good; so if a Bond be *Obligamus me heredes, &c.* it shall be good.

One is bound in *Triginti libris* (for *Triginta*) its good, *Rolls Abr. 2. p. 146. Taylor and Thorp,* in *sexigint. pro sexagint.* yet good, 2 *Bulstr. 241. 1 Rolls Rep. 47. Hob. p. 20. Marshall and Folly.* *Septuagent.* for *septingent.* was holden to be good, *septua* being easily understood for *septem*, and the Condition was for payment of Money less than the Penalty, *Hob. p. 116. Yelw. p. 95. 2 Rolls Abr. 147. Walter and Piggot.* If a Man is bound in *sexingentis* for *sexcentis libris*, this is a good Obligation, for *sexingent.* is good Latin, 2 *Rolls Abr. 147.* A Bond was made in Italian, and it was *sessanta libris* for *sexagint.* and good, *Cro. Jac. 208. Hob. 19. Parker and Kennedy.* A Man is bound in *trigintata* (for *triginta*) yet its good, *Hob. p. 18. 2 Rolls Abr. 147. Loggins and Tether-*

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ble by the Statute to be bound; and upon misbehaviour, Remedy lies by Correction of the Master, or the Justices, *Crook Hill. 5 Car. fo. 179. Gilberts and Fleteber.*

The Plaintiff had paid Money for the necessaries of the Infant, and took Bond in double the sum, its void; otherwise, if he had taken Obligation for the very Sum, *Crook Hill. 45 Eliz. fo. 920. Ailiff and Archdale.*

If the Bond be of excessive value, the Infant may traverse *absque hoc* that it was for necessary Apparel, and the Plaintiff must reply specially, and shew the Bond to be suitable to the price of the things. *Quer.* If the Jury ought to find in such case *non est factum*, 1 *Keb. M. 14 Car. 2. f. 416, 423. Russel and Lea.*

An Infant submits himself to an Arbitrament, its voidable; for he may wave it, if it be to his prejudice during his Minority; but if he do any thing which amounts to an Agreement at his full age, it shall bind him, *Noy pag. 93. Stone and Knight.*

The Bond beareth date when the Defendant was within Age, but it was sealed and delivered at full age. The time of making the Bond, shall be when the Bond is sealed, and not when it bears date, 1 *Brownl. Rep. p. 31.*

Debt on Bond dated 10 June, and delivered the 18th of the same month; the Defendant pleads by Protestation it was delivered the 18th day, *absque hoc*, that at that time, he was of full age, *Noy p. 34.*

If an Infant make an Obligation and being sued upon it, an Attorney without Warrant suffers a Judgment

Judgment by *non sum informatus*; if he were within age, he shall have a Writ of Error; if he were not, he shall have a Writ of Disceit against the Attorney, but no *Audita Querela*, *Winch p. 114.* *Ashly and Collings.*

Non compos mentis.

IF a *non compos mentis* seal a Bond, he shall not avoid it himself, 4 Rep. 124. *Beverleys Case.* For no Man of full Age shall by Plea stultify himself; but privy in Blood, as Heir, or privy in Representation, as Executor or Administrator shall plead the disability of him, *Ibid.*

By Body Politick.

THEY must be named by the true Name of their Corporation; and yet if the essential part of a Corporation be named, it is sufficient in an Action; as *ad respondend. Majori & Burgenfibz de Lyn Regis in Com' N.* and found they were incorporated, *Majores & Burgeses Burgi de Lyn & non per aliud; per Cur.* the omission of the word (*Burgi*) shall not bar the Plaintiff, 1 Brownl. Rep. 57. *Major and Burgeses of Lyn* against *Pain.*

By what Names bound.

IF a Man bind himself in a faux Surname, he shall be estopped to avoid this; so if by a faux Proper-name, 3 H. 6. 25. b.

Obligations and Conditions. 17

None can make an Obligation or other Writing by a contrary name of Baptism. Administrator of *Elleanor* brings Debt upon Bond, the Defendant pleads the Intestate in her Life by the name of *Ellen* released, &c. The Plaintiff replied *non est factum Elleanoræ*, which was found so by Verdict, and well, *More n. 1192. Panton and Chowles.*

Obligation by the name of *John*, and the Condition by the name of *James*; the Declaration is that *James per nomen Job's* became bound, it is not good; for *John* cannot be *James*, *Crook El. p. 897. Field and Winlow.*

The Plaintiff declared in Debt against *Edmond Watkins* alias *Edward Watkins*, that he by the name of *Edmund* was bound &c. The Condition was, that if *Roger W.* paid 50 *l.* to the Plaintiff at a day, then &c. The Defendant pleads Payment by *Roger*, and Issue and Verdict *pro Quer* and Judgment: But it was reversed by Error; for *Edward* is bound, and *Edmund* is sued, which cannot be intended one and the same person, and no averment can help it; for one cannot have two Christian Names, and here is no Estoppel. *Aliter*, if the Condition had been if *Edward W.* pay the 50 *l.* and the Verdict found for the Plaintiff, then the Verdict should make it an Estoppel, *Crook Jac. 558. Watkins and Oliver.*

Debt on Bond brought against him by the name of *Jacob*; he pleads he was called and known by the name of *Faacob* and not *Jacob*, it was overruled, *Mod. Rep. 107. Abonbs.*

Who are bound though not named.

IF a Man bind himself, his Executors are bound, though not named; not so of the Heir; for the Executor doth more actually represent the person of the Testator, *Cook Lit. fo. 209.*

The Ordinary shall be bound if he administers, *2 Rolls Abr. 149.*

In respect of Obligees.

To whom Obligations may be made, and the Effect.

To Baron and Feme.

A. Makes a Bond to Baron and Feme, Baron dies, Feme administers and brings Debt upon the Obligation as Administratrix; she dies before Judgment, and her Executor brought Debt upon that Obligation: It lies not; it was in her a sufficient Election and Waiver; and that personal duty being a *chose in action* may well lie in jointure between Baron and Feme. *Aliter* of other persons, *Noy p. 149. Norton and Glover.*

To Feme Covert.

IF Bond be made to a Feme Covert, and the Husband disagree, the Obligor may plead *non est factum*: For by his disagreement the Obligation is no Deed, *10 Rep. 119. Whelpdale's Case.*

To

Obligations and Conditions. 29

To Feme sole.

THE Husband (after she marries) must join with her in the Suit; for if cause of Action arise before Coverture, though but Trespas, where damages are only recoverable, they must joyn, 1 Keb. 440. *Hardies Case*.

To Alien.

AN Alien born under the Obedience of an Enemy may have Debt on Bond for personal things, *More n. 852. Walsford and Morsham*.

To Corporations.

A Bishop, Parson, Vicar, Master of an Hospital, or other sole Body politick cannot take a Recognisance or Obligation, but only to their private, and not in their politick Capacity; and therefore no Chattel either in Action or Possession shall go in Succession, but the Executors or Administrators of the Bishop, Parson, &c. shall have them. This is regularly true, except a Custom enable it to go in Succession, as in the Case of the Chamberlain of London for Orphanage Mony, there it goes to the Successor. But in case of a Corporation aggregate of many, as Dean and Chapter, Major and Comminalty, &c. it goes to the Successor, for they in Judgment of Law never die, 4 Rep. 65. *Fullwood's Case*, *Crook Eliz. p. 480* Bird and *Wilsford*.

A Man cannot bind himself to two severally in a Bond; but a Man may covenant with two severally, for that sounds in damages, *March. Rep. p. 103.*

I shall in the next place come to the Dates of Obligations; and though it may be good without a Date; yet when it is dated, there is good Learning in our Books concerning the Juries finding, pleading, &c.

Date.

6th 10th 12th 13th 14th 15th 16th 17th 18th 19th 20th 21th 22th 23th 24th 25th 26th 27th 28th 29th 30th 31st
Obligation is good though it wants a Date, or hath a false or impossible Date, 2 Rep. *Goddard's Case.*

Declaration *sur* Obligation made *ultimo die Augusti anno*, &c. upon Oyer of the Bond, it bore date 19 Aug. *an. &c.* The Defendant pleads *non est factum*. Jury found it his Deed. Judgment *pro Quer'*: For the Count was not of the date, but of the making, and the Jury have found the Deed, *Hob. p. 249. Thorp and Taylor.*

One brought Debt, and declares the Defendant 4 Apr. 4 Eliz. made a Bond bearing date the same day and year, and the Defendant pleads *non est factum*, and its found that the Deed was delivered at another day before or after than the Plaintiff hath declared, yet Judgment shall be for the Plaintiff, for the date is not material, and the Defendant cannot be twice charged, 2 Rep. 5. *Goddard's Case.*

If it be a mistaken date as to the King's Reign, or no King's Reign be in; or an impossible date, or if it want a date, its good; and the party may surmise

surmise a date in the Declaration, and it is good, and the party ought to answer to the Deed and not to the Date, *Yelv. 194. Dobson and Keyes, Crook Jac. 261. id. Case,*

The Obligee cannot alledge the Delivery before the Date, yet the Jury may find the truth; and tho there wants *in cujus rei Testimonium*, yet its good, *2 Rep. Goddard's Case.*

Obligation bears date in *France*, it may be sued in *England's* and it shall be alledged to be at *Islington* in *France*, for its not traversable whether there be such a place as *Islington* or not, *Cook Lit. 261. b. Latch. p. 77. Ward's Case.*

The Defendant pleads *quod factum præd.* was made and delivered *sans* Date, and afterwards the Plaintiff put a Date thereto and so not his Deed; ill Plea upon demurrer; for the Defendant first confesseth it to be his deed by saying *factum præd.* and then concludes its not his deed, *Crook Eliz. 2. 800. Cospes. versus Turner.*

In *det sur obligation fait 1 Novemb. 12 Jac.* the Defendant pleads in Barr an Indenture of De-feasance, and shews not the date of it, but by these words *iisdem die & anno*, referring this to the Plea of the Defendant (*viz.*) to the date of the Obligation alledged in the Count; the Bar is insufficient for the uncertainty; for this shall be intended to bear date before the Obligation, for that every deed shall be taken most strongly against him that pleads it, *Doct. pl. 29.*

If a Man plead *factum suum dat. primo Jan. & deliberat. quarto Jan.* he ought to say *primo deliberat. 4to die Jan.* otherwise the word *su-*

non imports that this was his deed the first day of *Januar.* per *Dyer* 5 *Eliz.* 221. b.

I shall now treat of the delivery of an Obligation being an Essential part or circumstance required thereto, and what amounts to a good delivery to the party himself; and where the delivery of a deed is traversable; and of the Delivery as an Escrow; and how *non est factum* may be pleaded thereon.

Delivery.

THE Defendant pleads *non est factum*; The Jury found the Defendant caused the Obligation to be written and signed and sealed it, and then laid it upon a Table, and the Plaintiff came and took it; per *Curiam*, this was not the Defendants Deed without other Circumstances found by the Jury. Had the Obligor cast it on the Table and said this will serve, and the other took it, it had been good, *Crook Eliz.* p. 122. 1 *Leon.* n. 193. *Chamberlain* and *Staunton*.

If an Obligation be delivered to another to the use of the Obligee, and the same is tendered to him, and he refuseth it, then the Delivery hath lost its force, and the Obligee can never after agree to it, and therefore the Obligor may say it is not his Deed, 5 *Rep.* p. 119. *Whelpdale's Case*.

Obligation dated 3 *Sept.* 1 *Fac.* Condition was that if the Defendant 4 *Sept.* 2 *Fac.* pay 100 l. to J. S. at such a place and also save the Plaintiff harmless from any Suit &c. The Defendant pleads true it was, that he by his Obligation bearing date

3 *Sept.*

3 Sept. 1 Jac. did become bound in 200 l. but further said, that the said Obligation was not delivered as the Defendants Deed until the 17th day of Sept. 2 Jac. and then *suit primo deliberat*. Upon demurrer adjudged *pro Quer.* for the Bond mentioned in the Declaration is not answered; For the Plaintiff shews the Defendant was obliged to him by his Obligation bearing date the same day, &c. which is laid to be a perfect Bond the same day as the Plaintiff counteth; and then for the Defendant to come, and say that it was first delivered 17 Sept. 2 Jac. which is a year after, is no good argument, but naught without taking a Traverse, *absque hoc* that it was made the 3d of Sept. 1 Jac. 1 Brownl. p. 104. Green and Eden, Telv. p. 138. *id.* Cale.

Debt on Bond 18 Car. 2. to pay 300 l. in six Months next after the Defendants Marriage. The Defendant pleads *primo deliberat*. 22 Car. 2. and that no Marriage was, *Post* 22 Car. 2. *bucusque: per Curiam* though there can be no *primo deliberat*. before the day of the date, yet after it may, on Goddard's Case, Coke. But Condition to pay Money three Months after the precedent Marriage is impossible, and so the Condition single and good, 3 Keb. 332. Newland and Dendy.

In Debt *sur* Bond which in truth was made to A. H. of London Merchant, to the use of A. H. his Factor beyond Sea now Plaintiff; the Defendant pleads that A. J. sealed and delivered a Bond to A. H. of London Merchant, *absque hoc* that he sealed to A. H. the Plaintiff; the Plaintiff demurs being but the general Issue, Not guilty; if Evidence be that its sealed to the use of the Plaintiff,

tiff, it is all one as if sealed and delivered to him, 3 Keb. 738. *Hawtry and White.*

If the Defendant plead the Delivery after the Condition impossible to be performed, then is the Obligation become single, *Yelv. p. 138. Green and Eden.*

The day of the Delivery of a Deed is not traversable, unless it be upon a special Cause, as if one be bound in an Obligation dated *primo die Octobris*, to pay 10 l. at the Feast of *All-Saints* next after the delivery of the Obligation; and the Obligation is not delivered till the 2d day of *November*. In Debt upon this Bond the Plaintiff declaring of a Deed delivered *primo Octob.* the Defendant pleads that it was *primo deliberat. 2do Novemb.* and that he tendred the 10 l. at the Feast of *All-Saints* then next ensuing, *absque hoc* that the Deed was delivered *primo Octob.* *Jones Rep. 66. Bishop of Norwich versus Cornwallis.*

If Evidence be that it was sealed to the use of the Plaintiff, its all one as if sealed and delivered to him, 3 Keb. 739. in *Hawtry's Case.*

Delivery as in Escrow.

AN Obligation cannot be delivered as an Escrow unto the Obligee himself, but it may be delivered to another to the use of the Obligee, as an Escrow. For the delivery of it to the Obligee himself and his receiving it, makes it work as a Deed in the very instant of the delivery of it according to the effect of the Deed; but being delivered to another to the use of the Obligee, it cannot operate so, because he is no party to the Deed,

nor

nor can take any thing by it, and doth but only take it as an Escrow, and as an Instrument to deliver to the Obligee at such time and in such manner as the Obligor shall direct; and if he deliver it otherwise, the Obligor may plead *non est factum*, *Stiles Pr. Reg. 222*.

Therefore an Obligation may not be delivered as an Escrow to the party himself upon Condition to be his Deed upon special delivery, for this is absolute, being made to the party himself; for delivery is sufficient without speaking words, and when the words are contrary to the Act, they are of no effect, *Cook Lit. 36. a. 9 Rep. 136, 137. Thorouggood's Case. Vid. Hob. p. 246. Holford and Parker. More n. 836. Williams and Green.*

Though the Plea, that he delivered it to the Plaintiff as an Escrow to be his Deed upon performance of Condition; be not good; yet being pleaded and replied to, and admitted for good, and Issue being joyned and found false, the Verdict is good and Judgment well given, *Vid. Crook Jac. 85. Blunden and Wood.*

If the Deed be delivered to the party himself first, as his Deed upon Condition, the Deed is absolute; but when it is first delivered as an Escrow though to the party himself, it is not his Deed till it be performed. One brings Obligation to me and prays me to deliver it as my Deed, and I say, do such a thing and take it as my Deed, otherwise not: It is clear, it is not my Deed until the thing performed; here the Condition is precedent, so as it was not his Deed until it was performed; and therefore a Conditional Delivery may be averred *sans* writing; but if once delivered as his Deed

Deed, it cannot afterwards be defeated, if the Condition be not in writing, *Quer. Crook Eliz.* 835. *Hawkland versus Gatchel, contra. Crook El. p. 884. Williams and Green.*

The Defendant pleads the Writing was his, and delivered to one *W.* as a Schedule until certain Conditions performed, and then to deliver it to the Plaintiff *ut scriptum*, and saith not *ut factum*; yet *per Curiam* all is one in Construction of Law, 2 *Keb.* 690, 733. *Twiford and Barnard.*

The Defendant pleads it was delivered as an Escrow on future Condition, and so *non est factum*, & *hoc paratus est verificare*. The Plaintiff demurs specially *quia minus apte conclusit*. *Per Curiam*, *sic non est factum* is a full Issue, and the *hoc paratus* is ill, Judgment *pro Quer.* 2 *Keb.* 805. *Goslin and Broad, id. p. 836. Edwards and Webb.*

Of later time it is adjudged that he must conclude to the Country. *Et issint nient son fait, & de hoc ponit, &c.* 3 *Keb.* 26, 30. *Forth and Fletcher, Edwards and Webb, ib. p. 142. Manning & Bucknal, contra.*

Per Hale, An Escrow may be given in Evidence on *non est factum*, as well as Suspension on *nil debet*, in *Manning and Bucknal's Case*, 3 *Keb.* 142.

If a Man be obliged to perform things in such a Deed, it is no Plea to say, he delivered this as an Escrow, &c. & *issint non est factum*, 1 *Roll. Rep.* *per Cook* 84. in *Fletcher and Tarrer's Case*.

Sealing.

THE Plaintiff declares, that the Defendant *per scriptum suum obligatorium concessit se teneri, &c.* without saying, *sigillo suo sigillat.* and good in the Common Bench, for there the Presidents are so. Delivery is never alledged, so neither is it necessary to alledge the Sealing. When he saith *per Scriptum suum obligatorium*, all necessary Circumstances are intended to concur, *Crook Eliz. p. 738. Penson and Hodges.*

Witnesses.

ONE ought not to be allowed to be a Witness to prove an Obligation or other Deed, which he takes in the name of another: For if he might be so admitted, this is on the matter to suffer him to prove a Deed or Bond made to himself, *Stiles Pract. Reg. 221.*

Obligations are either } Single, called a Bill.
 } Joynt.
 } Joynt or Several.

Bill.

A Bill penal is called a single Bond; and a Bill may be without a penalty.

In Debt on Obligation (no Oyer being demanded) it is intended a single Bill.

As to the Frame of the Bill, and by what Words and in what Form it shall be good, I have shewed before,

before, in Title, *The Frame of Obligations*. Now I shall set down some Cases as to Declarations and Pleadings on Bills.

A Bill Obligatory written in the Plaintiffs Book, and the Defendants Hand and Seal to it is good, *Crook Eliz. p. 613. Fox and Wright.*

I acknowledge my self to owe, and be endebted to *J. F. and W. S.* in the sum of 91 *l. 1 s. 8 d.* to be paid the first of *Novemb.* following; for which payment to be made I bind my self to *J. S.* in 100 *l.* *Qu.* Whether *F.* ought to bring the Action for the 100 *l.* or both of them for the 91 *l. 12 s. 8 d.* *Crook Jac. 291. Foxal and Sands versus Corderoy.*

A Bill was made in this manner: *Memorandum*, That I *Will. Jethro* do owe and am indebted to *Edmond Hamond* in the Sum of Ten Pounds for the payment whereof I bind my self &c. In witness; and after the (In Witness) it was thus subscribed, *Memorandum*, That the said *Will. Jethro* be not compelled to pay the said 10 *l.* until he recovers 30 *l.* upon an Obligation against *A. B.* &c. And in the Count no mention was made of this Subscription; but this appears when the Defendant prays *Oyer* of the Bill, the which was then entred *verbatim* on Record: Upon which the Defendant demurs, because it is not mentioned in the Count, it being a Condition precedent; *aliter* of a Condition subsequent. But *per Curiam*, this which is after (in witness) is not part of the Deed, but may be a Condition or Defeasance, and so need not be contained in the Count; but then the Defendant ought to have pleaded so, and not demurred; for this makes the Bill conditional;
Judgment

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Judgment *pro Quer.* 2 *Brownh.* 97. *Hamond* and *Jethro.* Bill of 68 *l.* with Covenant to pay it when such Bills be stated, &c. the Covenant being in the same Deed works as a Defeasance, 2 *Keb.* 624. *Holday* and *Orway.*

Debt for 40 *l.* upon a Bill Obligatory, and declares that the Defendant by his Bill dated, &c. confessed himself to be indebted to the Plaintiff in 20 *l.* *solvend.* at *Michaelmas* next following, *ad quam quidem solutionem*, he bound himself in 40 *l.* and for Non-payment of the 40 *l.* the Action brought: The Declaration is ill, because it is not therein alledged that the 20 *l.* was not paid at the day; for if otherwise, the 40 *l.* was not due; for it is not an Obligation with a Condition, *Crook M.* 1 *Car.* 515. *Bains* and *Brighton*, 1 *Rolls Abr.* 414. *M.* 14 *Car.* *Mesme Case*, *Danes* and *Brett.* But in *Stiles* p. 23 *Car. B. R.* Debt on a Bill, Penal and Verdict *pro Quer.* It was moved in Arrest of Judgment, that the Plaintiff shewed not, that the Defendant did not pay the Money at the day limited in the Bill, but only saith, *non solvit*, &c. 2. He declares the Defendant was bound to pay such a Sum *legalis monetæ*, and doth not say *Angliæ*, the Court over-ruled both Exceptions, and the Plaintiff had Judgment.

Bill of 70 *l.* to be paid on demand; it is a duty presently, and there needs no actual demand, *Cro. Eliz.* p. 548. *Cap* and *Lancaster.* If the Plaintiff declares generally, that he often requested, &c. and the Defendant demur to the Declaration, *per Cur.* he ought to plead; yet if the Defendant had demanded Oyer of the Bill, and upon that have demurred, it had been a good demurrer, because

a special demand was in the Bill, and no special demand alledged in the Declaration, 1 *Brownl. Rep.* 56. On a collateral promise to pay money on demand, there must be a special demand; but between the Parties it is a debt, and sufficiently demanded by the Action. *Aliter*, if the Money be to be paid to a third person, or where there is a penalty, 3 *Keb.* 176. *Ashenden's Case*.

Debt on Bill to pay 50 *l.* on demand; and on Non-payment the Defendant to pay an 100 *l.* Action is brought for the 100 *l.* the Defendant pleads there was no demand; the Plaintiff demurs, *per Cur.* the Action is a demand for the 50 *l.* but no cause to forfeit the 100 *l.* the Defendant should plead tender of the 50 *l.* & *uncore prist.* But where the Condition of an Obligation is to pay on demand, that is a distinct deed from the Bond, and there is no Title to the Forfeiture without demand. But the debt here of 50 *l.* is not lost by not demanding; therefore in Bar the Defendant must say *uncore prist.* Judgment *pro Quer.* 3 *Keb.* p. 577. *Ramsey and Rutter.*

Debt on a Bill penal with these words, *To be paid as I pay my other Creditors.* The Plaintiff declares generally, that he was indebted to him in 5 *l.* *solvend.* upon Request. The Defendant demands Oyer of the Bill, and it was entred *in hac verba*, and pleads an insufficient matter; upon which it was demurred. And this Exception was to the declaration for variance from the Bill, for *per Cur.* he ought to declare specially according to the Bill. Judgment for the Defendant, *Crook El.* 256. *Bright and Metcalfe.*

The Defendant demands Oyer of the Bill, by which it

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it appears the Defendant and two others are bound. The Defendant demurs, *per Cur. pro Quer.* The Defendant ought to have pleaded two others sealed the Bill Obligatory, who are in full life, *Jones p. 303. Vid. Obligation.*

In Debt *sur* single Bill of 50 *l.* the Defendant after imparlance pleaded that after the last continuance he had paid the Plaintiff 5 *l.* parcel of the 50 *l.* and demanded Judgment of the Bill (*petit quod billa cassetur*) the Plaintiff demurs. It is an insufficient Plea, because the Defendant did not alledge he had an acquittance which he ought to produce, if he had an acquittance he might have pleaded in Bar or Abatement; but this Plea is not peremptory because it concludes in Abatement, & *respondeas ouster* awarded, *Allen 63. Loder and Hampshire. Allen 65. Beaton and Forrest. Stiles 212. Hollingworth. 15 H. 7. 10.*

Payment without Acquittance is no Plea to a single Bill, *Crook Eliz. 157.* And yet if such Payment be pleaded upon a Bill, it being admitted and tryed against him who pleaded it, the tryal is good, and Judgment shall be given thereupon, as in *Blunden and Wood's Case, Crook Jac. 85.* For though Payment without Acquittance be no Plea, and Issue is joined upon a thing not material (for if the Defendant hath paid the Sum without Acquittance, yet the single Bill doth remain in force) But in as much as there was an Issue joyned upon an affirmative and a negative, which is found *pro Quer.* it is expressly helped by the Stat. 32 *H. 8.* and 18 *Eliz.* Judgment *pro Quer.* 5 *Rep. 43.* *Chamberlain and Nichol's Case.* The Plaintiff might have demurred upon the Plea, and good,
Crook

Crook Eliz. 455. mesme Case, and More n. 908.
 As in Debt the Defendant demands Oyer, which
 was to pay Mony 31 Sept. the Defendant pleads
solvit ad diem; and upon Issue joyned, found for
 the Plaintiff. The Condition being impossible
 the Obligation is presently due, and it was an Issue
 upon an insufficient Bar, which being found for
 the Plaintiff is aided by the Stat. *Jones p. 140.*
Jiggon and Purchas.

Debt upon a Bill, whereby the Defendant ac-
 knowledged he had received 7 l. of the Plaintiff
ad emendum a pair of Bellows, &c. to the use of
 the Plaintiff, and avers that he had not bought the
 things nor paid the Mony. The Plaintiff in this
 Case may have Debt or Account, *Cro. Eliz. p. 644.*
Earl of Lincoln versus Topcliff.

Obligations } *Joynt.*
 } *Joynt and Several.*

*By what Words or when an Obligation may be
 said to be Joynt or Several: Actions and De-
 clarations thereon.*

FOUR are bound in an Obligation by these words
 (*& utrumq; nostrum*) the Obligee may charge
 any of these severally. But if he will have a joint
 Action of Debt against two of the four, the Writ
 shall abate; for if the Plaintiff will charge them
 jointly, the other two which are not named shall
 be charged also with them jointly by the same
 Deed, 10 H. 7. 16. 34 E. 3. *Dyer 129.*

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Two are bound *per joint Words*, and every of them by himself puts his Seal to the Deed, this shall not make the Obligation several, 18 H. 7. 16.

Two bind themselves *vel alter eorum*, this makes the Obligation joint or several, 7 H. 4. 6. b.

Two bind themselves & *quemlibet nostrum*, this is joint or several, 2 Rolls Abr. 148.

Two bind themselves *vel utrumq; nostrum*, this is joint or several, for this word (*vel*) makes it several at Election, 2 Rolls Abr. 148. Hankerson, and Sir Tho. Sandelson *mesme Case*, vide 1 Brownl. Rep. p. 121. Cro. Jac. 322. 2 Bulst. 70.

Three are bound jointly and severally in one Bond; the Obligee brought Debt against two, this he cannot do, but he may have one Precipe against the Three, or several Precipes against every one, 27 H. 8. 8. & *singulos nostrum*, 1 Brownl. 121. is joint or several.

Three were bound in a Bond by these words *Obligamus nos & quemlibet nostrum conjunctim*. Its a joint Bond and not several, for the word *quemlibet* is expounded by the word *conjunctim*, 3 Leon. p. 206. Wigmore and Wells, Mart. p. 390.

Uterq; recognovit makes a joint Bail Bond, or several, at election, Cro. Jac. p. 45. Hargrave and Rogers.

Novimus universi nos I. B. A. K. & H. F. Tenari &c. ad quam quidem solutionem &c. Obligamus nos Haeredes Executores & Administratores nostros sigillis nostris sigillat. Plaintiff declares against the Defendant sole; Defendant demurs up-

On Oyer, because it appears upon Oyer that they are joint. *Per Cur.* The two others are named, yet it appears not that they put their Seals to it, and so the Obligation is single; but if the truth were that the other two had sealed as well as the Defendant, then the Defendant if he would take advantage of this, ought not to have demurred upon the Oyer, but he ought to have pleaded in Abatement, that the other two Persons sealed the Obligation, who are yet in full Life, and so pray Judgment of the Bill. 1 *Sanders Trin. 21 Car. 2. fol. 271. Cabel and Vaughan.*

Though sundry Persons may bind themselves, & *quemlibet eorum*, and so the Obligation shall be joint or several at the election of the Obliger, yet a Man cannot bind himself to three, and to each of them to make it joint or several at the election of several Persons for one and the same cause, for the Court shall be in doubt for which of them to give Judgment, which the Law will not suffer, 5 *Rep. p. 18. b.*

If Merchants in a Charter-Party covenant with the Owners, *separatim*, that one Merchant shall pay 3 l. another 3 l. and so of the rest, the words are *conveniunt separatim*, and at the end there is such a Clause, *Et ad performance omnium & singular' convention' ex parte predict' Mercator' perimplenda quolibet Mercator' predict' separatim obligat seipsum prefato Majori & pro Proprietariis en double le freight*, the Covenant is several, and so is the last part (*videlicet*) the Obligation, 5 *Rep. Mathewsons Case, 2 Rolls Abr. 149.*

In an Indenture there are three of the one part, and two of the other part, in which the two
covenant

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covenant jointly and severally to do a certain thing, and the third covenants jointly and severally with the said two, after the performance of the said thing by the two, to pay to the said two a certain Sum for each particular, &c. and after ensued these general words, *Pro vera & reali performance omnium articularum & agreementorum predictorum alternatim utraq; partium predictarum obligavit se Hæredes Executores, &c. in & subter penalitatem 60 l. Sterlingorum.* This Covenant is joint and not several, and an Action on the last Clause cannot be brought against one of the said three only, 2 *Rolls Abr.* 149.

If an Obligation be writ in the Name of two, joint and several, and they severally deliver the Obligation at several times and places, this is yet joint and several, 8 *H.* 6. 31.

Debt on joint Obligation *vers.* Survivor, Defendant pleads one of the Obligors died, and the Plaintiff afterwards released to his Executor, the Release is void, *aliter*; had the Obligation been joint and several, 1 *Keble* 936. *Scot* and *Littleton*.

Joint Bond by three, and Count General, the Jointure appearing upon Oyer demanded, the Court will intend they are dead, or not sealed; had the Declaration been on a joint Bond, the Plaintiff must aver the death of the others, or that they never had sealed, 1 *Keble* 936. *Tr.* 17 *Car.* 2. *Osborn* and *Croftland*, *vide plus Doct. Placit.* 268.

Two are bound jointly, and one is only sued, he may plead this matter in abatement of the Writ; but he may not plead *non est factum*, *Co.* L. 283.

Two are jointly bound in an Obligation, Action is brought against one of them only; upon this the Defendant cannot demur, but may plead in Abatement, *Siderfin* 2. 12. And if one of the Obligors die, the Obligee in his Action of Debt against the other that survives, must set forth in his Declaration that the other is dead.

Four were bound *conjunctim & divisim* to B. B. had Judgment against them, and one of them dies, B. sues forth a *Sci. Fac.* against the four, its ill, *Stiles, Trin. 23 Car. p. 50. Blackwell and Ashton.*

When two are jointly bound in an Obligation, though none of them is bound by himself, yet none of them shall plead *non est factum*, but he may plead in Abatement of the Writ, for they had sealed and delivered it, and every of them is bound in the entire; therefore if they two are sued, and one appears, and the other makes default, and by Process of Law he is Outlawed, he which appeared shall be charged with the whole, 5 Rep. 119. *Whelpdales Case.*

The Defendant pleads he was bound *simul cum* R. G. to whom the Plaintiff had released all Actions the said first day of May, (that being the date in the Declaration,) the Plaintiff by Replication shewed, that after the Obligation sealed by R. G. he released to him, and after, *i. e.* the same day the Plaintiff sealed the Bond, *absq; hoc quod simul tenetur cum* R. G. The Defendant demurs; this Release doth not discharge the Defendant, and *per Cur.* the Traverse is ill, because R. G. was bound with the Defendant; but because the Defendant had not taken advantage of it to shew it on the

Obligations and Conditions. 37

the Demurrer, but confess it ; Judgment *pro quer*
Cro. Eliz. p. 161. Mannings and Townsend.

Two brought Debt on Bond, the Defendant pleads that the Obligation was made to them, and to one *Bellamy*, and that they three had an Action of Debt depending against him ; Judgment *si Actio* and demur : Adjudged *pro quer.* because an Obligation made to two, on which they counted, cannot be intended an Obligation made to three ; and if it be a Plea, its in Abatement of the Bill ; *Cro. Eliz. p. 202. Isan and Hichcock.*

Debt on Bond by three, brought against one without shewing the other two are dead, the Plaintiff ought to shew the others were dead ; but in *Whelpdales Case* this advantage was waved on *non est factum* pleaded ; also the Obligation being *Obligamus nos*, it shall not be intended the others did not seal, but if they had not, the Count should have one Writing by three, whereof two did not seal, 1 *Keb. fol. 840. Osborn against Cawthorns Executors.*

Conditions of Obligations.

1. The Nature of such a Condition.
2. The distinct respects or differences thereof in our Law.
3. What shall be said a good Condition of an Obligation, and what not.
4. The Exposition of Conditions, or when a Condition shall be said to be performed, and when not.
5. How a Condition and Obligation may be discharged, and gone by matter *ex post facto.*

The Nature of a Condition.

When an Obligation is clogged with a Condition, its called a Bond conditional or double Bond ; when it is in another Deed or Instrument, its called a Defeasance ; but it is commonly subscribed under the Obligation, or included within the Body of it, or indorsed upon the back of it ; and if the Condition be performed, the Penalty is saved, if not, the Penalty is forfeit.

The Condition is always for the benefit of the Obligor, 1 *Sanders* 66. *Butler* and *Wig*, and shall be construed favourably for his advantage : *Cro. El. p. 396. Greninghams Case, 1 Leon. p. 142.* Condition to perform an Award, the Arbitrator made Award 24 *March*, that the Defendant should pay to the Plaintiff 10 *l.* at *Michaelmas* next ; the Defendant pleaded the Plaintiffs Release of all Actions and Demands made the 10th of *April* ; *Per Cur.* the Release is no bar to the Plaintiffs Action ; difference is, where Obligation is entred for payment of Mony at a day to come, there its a Debt presently, and may be discharged by such Release before the day of payment ; but not so in case of Annuity, Rent and an Action of Debt for non performance of Award to pay Mony at a day to come, *Cro. Jac. p. 300. Tyman and Bridges.*

The several sorts of Conditions.

Some are in the Affirmative, to } do an Act,
 } suffer an Act.
 Some in the Negative.

Some are to pay Money, and some are to do a collateral Act. Debt on Obligation to stand to the Award of J.S. the Defendant pleads no Award. Plaintiff replies, and shews the Award, but assigns no Breach, its ill, for the Obligation is not for any Debt, but this is guided by the Condition, which goes in performance of a collateral thing, (*viz.*) of an Award, *Yelv. fol. 152, 153. Barret and Fletcher, Cro. Jac. 220.*

Some Conditions are Precedent and executed, and some are Subsequent and executory. If *A.* acknowledge by his Bill obligatory, that he owes to *B.* 20 *s.* and for the payment of this at a day, he binds himself in 40 *s.* by the same Bill, in debt upon this Bill for 40 *s.* he ought to aver that *A.* had not paid the 20 *s.* otherwise its not good, 1 *Rolls Abr. 414. Danes and Bret.*

An Award is made by Arbitrators between *A.* and *B.* that *A.* shall pay 10 *l.* to *B.* and in consideration inde *B.* shall be bound in an Obligation to *A.* to release all his Right in certain Land, &c. In this Case *B.* is to be bound in the Obligation, though *A.* had not paid the 10 *l.* for it is not a Condition precedent; and there is a mutual remedy of each Party, if the Award be not performed, 1 *Rolls Abr. 415. Vivian and Shipping.*

If Condition of a Bond be to stand to the Award of *f. S. ita quod fiat de & super præmissis per Writing* under the Hand and Seal of the Arbitrators, and published, &c. This is all a Condition precedent, for if it be not in Writing under the Hands and Seals, &c. its no good Award, 1 *Rolls Abr.* 416. *Birbridge and Raymond.*

If *A.* be bound in Obligation of 20 *l.* to *B.* with condition that if *B.* shall bring twenty Load of Wood to the House of *A.* that *A.* shall pay him the 20 *l.* or that *A.* shall pay him 20 *l.* when *B.* shall bring him twenty Loads of Wood to his House; these are good Conditions, and the thing must be done before the Mony is paid, *Brook. Count.* 69. 2 *Brownl.* p. 98. *Hamond and Jethro.*

Bond of Covenants.

THE Plaintiff Covenants not to exercise the Trade of a Tailor with such Customers; and the Defendant in consideration of that, Covenants to pay 100 *l.* per annum during his Life; the Defendant pleads in Bar the Plaintiff had wrought with such a one; the Plaintiff demurs: *Per Cur.* this amounts not to a Condition precedent, for then the Plaintiff shall never have his 100 *l.* it being a negative Covenant, *ergo* its not a Condition; but the Defendant ought to have his Action of Covenant against the Plaintiff for Breach, 2 *Sanders* 155. *Humlock and Blacklow.*

Some Conditions are copulative, to do divers things.

Some are disjunctive, when one of divers things

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is to be done; of which Learning more hereafter.

Conditions likewise are distinguished in reference to Acts to be done, which are either transitory or local.

What shall be said a good Condition of an Obligation, and what not.

1. For the framing and wording of it.
2. For the matter and substance of it.

For the framing and wording of it.

1. What words amount to or make a Condition.
2. What shall be said parcel of the Condition, *vid. Exposit.*

What words make a Condition.

THE Condition of an Obligation is such, That if R. H. do not grant over the Benefice of D. during his Life, then the said J. H. (the Obligor) doth covenant to grant and assign the said Advowson to the Obligee and his Assigns, &c. though the word *Covenant* be put in here, yet this is conditional, for its said in the beginning, The Condition of this Obligation is such, &c. *Trin. 38 Eliz. B. R. 1 Rolls Abr. 409. Wisden and Haynes.*

If the Condition of an Obligation be thus: Now therefore if the said Obligor pay 10 l. (to the Obligee) quarterly, then it is agreed that the
Obligation

Obligation shall be void; this is a good Condition, P. 8 Jac. B. 1 Rolls Abr. 409. *Simson and Bernard.*

The Condition of an Obligation was, *That if the within bounden T. C. at any time within the space of four years do pay to the within named T. L. his Executors 9 l. &c. beforehand paid to the said T. C. by the said T. L. for the Bargain and Sale of a Croft, &c. so that the said T. C. do not alien, sell nor mortgage to any Person but only to the said T. L. or his Heirs, that then, &c. Per Cur.* the words (*so that*) shall be taken to be as much as (*if that*) and they shall not make a Condition for want of the word (*and*) before the words (*so that,*) and the Defendant was not bound by this Obligation to pay the said 9 l. if he hand not aliened the said Land, *Bendl. n. 145. p. 36. Lukin and Choppin.*

If in the Close of an Obligation of 20 l. these words be added, *That if A. (the Obligor) pay 10 l. to B. (the Obligee) at Easter, then this Obligation shall be void*; this is a good Condition, *Bro. Ob. 85.*

If these words be omitted in the Close of the Condition, (*that then the Obligation to be void*) the Condition is void, but the Obligation is single; but if the next words (*or shall stand in force*) be omitted, the Condition is not the worse, P. 9 Jac. B. R. *Trumans Case*, 2 *Sanders* 78. *Malverer and Hawksby contra.*

A. bound in an 100 l. to B. the Condition of the Bond was, *If A. the Obligor did not pay, &c. then the Bond should be void*; and the Defendant pleaded in that case, that he had not paid the Mony,

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Mony, and so avoided the Obligation; yet this was not the intent of the Obligation, but Judgment must be according to the purport of the words, 39 H. 6. 9, 10. 1 Sanders p. 66. in Butler and Wigg.

The Condition was to pay Mony, and in default thereof the Bond should be void: Defendant pleaded he did not pay; Per Cur. the Condition is repugnant and void, and the Obligation single, 1 Keble 359, 415. Vernon and Alsop, id. Case, Sinderfin p. 105.

A penal Bill, and after (in Witness) it was thus subscribed, Memorandum, That the said Will. J. be not compelled to pay the said 10 l. until he recovers 30 l. upon Obligation against J. B. which appears upon the Oyer.

Its a good Condition or Descesance, and need not be contained in the Count; but the Defendant ought so to plead it, and not demur, 2 Brownl. 97, 98. Fetbro and Hammond.

What shall be said parcel of the Condition.

IF the Condition of an Obligation be in such manner, Whereas Robert Cross the Father, shall and will before such a day surrender the moiety of the said Copyhold Tenement unto Robert the younger, so that Robert the younger be thereof so seised, according to the Custom of the Mannor, if they so long live, then the Obligation to be void; the later words (if they so long live) do not make the Condition only, but the Surrender is parcel of the Condition also. M. 11 Jac. B. R. 1 Rolls Abr. 409. Marker and Cross.

If

If the Condition of an Obligation be in such manner, *The Condition of this Obligation is such, That if the above bounden A. B. do discharge the Obligee of such Recognizance, &c. And whereas also the above bounden A. B. hath agreed to free and discharge the said Obligee from two several Obligations, &c. Now the Condition of this Obligation is such, That if the said A. B. do save and keep harmless the Obligee, of and from the said two several Obligations, then this present Obligation to be void; the last words do not restrain the Condition to the last part only (to wit) of the two Obligations, but do extend to the Recognizance, per the first words, The Condition of this Obligation is such, and per the word (also) in the last Clause, 1 Rolls Abr. 409. Ingoldsby and Steward.*

For the Matter and Substance of the Condition.

What Conditions are good, and what not.

A Condition to do any lawful or possible thing, is good; as to make a Release, perform Covenants, not to play at Cards and Dice, not to be Surety, &c.

But when the matter or thing to be done by the Condition is unlawful or impossible, or the Condition it self is repugnant, insensible or uncertain; the Condition is void, and in some Cases the Obligation also.

Conditions

Conditions against Law are void.

Against the Law of God, of Nature ; to do a thing that is *malum in se* ; as to kill a Man, or do any other Felony, &c. in such Cases the Condition and Obligation are both void, *Co. Lit.* 206.

Conditions against } Common Law.
 } Statute Law.

Note, This difference between a Bond made void by Common Law, and a Bond made void by Statute Law. If a Bond be made void by Statute Law, its void in the whole ; as upon the *Statute 23 H. 6.* If a Sheriff take a Bond for a thing against that Law, and also for a due Debt, the whole Bond is void ; for the Letter of the Statute is so, *2 Rolls Rep.* 116. But the Common Law doth divide, and having made void that that is against Law, lets the rest stand ; *Carters Rep. fol. 230.* in *Pearson and Humes Case.* A Bond to perform Covenants, one is void, and the other good ; the Bond is good for those that are agreeable to Law ; as in *Sir Daniel Nortons Case, Hob. p. 14. Cro. Eliz. p. 529. 2 Anderson 116. Lee and Colehill. 3 Rep. 82, 83. Lee and Colehill cited in Twines Case.*

If the Condition be to do a thing contrary to Law, the Obligation is void, *2 H. 4. 9. Co. Lit. 206. b.*

But

But here is another Diversity.

A Condition to a do a thing against the Law of God, of Nature, a *malum in se*, or against Law and Justice; in such Cases the Obligation and Condition are both void; as for unlawful Maintenance, for a Sheriff not to execute Process, and the like.

But when the thing to be done, or not to be done by the Condition, is not *malum in se*, but against some Ground of the Law; as that a Man shall make a Feoffment to his Wife, or is but *malum prohibitum* only; as that a Man shall erect a College contrary to the Statute of 31 Eliz. or a Man is bound to alien certain Lands to a Religious House, or repugnant to the Estate, as Feoffee of Land shall not alien or take the Profits, or that Tenant in Tail shall not suffer a Recovery, &c. In these Cases the Conditions are only void, and the Obligations remain single, and yet Equity will relieve against them; yet if a Feoffment be made of Land on Condition to kill J. S. the Condition is void, but the Feoffment is good; for the state of the Land is settled, and executed in the Feoffee, and cannot be taken back but by the performance of the Condition which is void.

If a Man make a Feoffment in Fee, on Condition that he shall not alien, this Condition is repugnant, and against Law, and the state of the Feoffee absolute; but if the Feoffee be bound in a Bond, that the Feoffee or his Heirs shall not alien, or take the profits, this is good; for he may notwithstanding alien, or take the profits, if he will forfeit his Bond, Co. Lit. fol. 206. a. b.

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A Man is bound to do a thing unlawful at present, which in time may be made lawful; as a Feoffment of a Strangers Lands, or of the Lands of an Alien, &c. in these Cases he is bound to do it, and at his peril he must obtain Power to do them, *Lit. Rep.* 86.

Condition was, That if the Defendant shall procure one J. S. to make reasonable Recompence to the Plaintiff, for certain Beasts which he wrongfully took from the Plaintiff, that then, &c. the Defendant saith *de facto* J. S. had stolen the Beasts, and was indicted, and so the Condition being against Law, the Obligation was void: *Per Cur.* where the Condition shall be said against Law, and therefore the Obligation void, the same ought to be intended where the Condition is expressly against the Law in express words, and not for Matter out of the Condition, as it is here; Judgment *pro quer.* 1 Leon. Case 99. *Brook and King.*

Conditions against Common Law.

Besides what hath been said before in general, take some few Cases of Conditions against Common Law.

Maintenance.

A Condition to maintain any Suit unlawfully, though no Act be done; for if it be unlawful to be done, the Bond is void.

The Condition is, If J. S. the principal, and J. H. and J. M. do pay, &c. all such Sums which are due, and shall be due in such Suits: the

the Defendant demurs, because the Condition is against Law; yet Judgment *pro quer.* for its fitness for the Party to give such Bond; and by the demurrer the Plaintiffs justification is taken away, and the Sureties are tied up, for they might have set forth an Interest, if he had pleaded generally, in which Case the Plaintiff must have assigned a Breach, or that he had performed what was good, (*viz.*) payment of Fees due, and demurred to the rest, it had been well, *Carters Rep. p. 229. 3 Keb. 153. Peirce and Humes.*

Obligations to contribute to Expences.

This difference was agreed, that for Suit for Common Custom or Copyhold, whereof the Obligees participate, there they may contribute; but not where they claim several Frank-Tenements, or Copyholds of Inheritance, in which they have a joint and equal Interest, *Noy p. 99. Sir Edw. Meredith* against his Tenants.

Conditions to perform Articles of an Indenture, which cited, That where certain Persons were obliged to the Earl of *Holland* in eight Obligations, which the Earl had assigned to the Defendant to his own use; now its agreed that the Defendant should assign these Obligations to the Plaintiff, to the Plaintiffs own use; Condition is void for Maintenance, *Q. Allen p. 60. Hodson vers. Sir Arthur Ingram.*

That a Tradesman shall not use his Trade.

A Bond, that a Tradesman shall not use his Trade, is void, though it be in such a Town, and for

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for such a time. But an *Assumpsit* in such Case is good, 2 H. 5. 5. *March.* 191. *Barrow* and *Wood* pl. 238. & 77. pl. 121. *Crook* Eliz. 872. *Colgate* and *Batcheler*, *Noy* 98. 2 *Bulstr.* f. 136. *Rogers* and *Parry*, 2 *Leon.* 210. 2 *Crook* 596. *Broad* and *Jolliff*, 2 *Keb.* 377. *Ferby* and *Arrowsmith*.

A Bond of Covenants.

THE Plaintiff covenanted with the Defendant that he would desist to exercise the Trade of a Taylor with such Customers in a Schedule; and the Defendant in consideration of the performance of that, covenants that he will pay to the Plaintiff 100 *l.* per ann. during his Life. The Defendant pleads in Bar, that the Plaintiff had wrought with such an one; the Plaintiff demurs; *per Cur.* this amounts not to a Condition precedent, for then the Plaintiff never should have his 100 *l.* it being a negative Covenant; and the Plaintiff cannot perform his Covenant during his Life, for its a negative Covenant, therefore it is not a Condition; but the Defendant ought to have his Action of Covenant against the Plaintiff for Breach, 2 *Saunders* 155. *Humlock* and *Blacklow*.

A Bond that an Officer shall take Fees by Extortion, is void: Or that he shall not exercise his Office being *pro hono publico*.

A Bond made by the Under-Sheriff to the Sheriff to discharge him of all Escapes, this is good. But a Bond that a Sheriff shall let a Prisoner escape, is void.

The Under-Sheriff makes a Bond to the High Sheriff, that he shall not return *Venire Fac.* nor intermeddle with Executions until he be acquainted it is naught and against Law, 1 *Brownl. Rep.* 64. 65. *Hobart* p. 14. *Norton* and *Sims*. That the Under-Sheriff shall not execute any Process of Execution without special Warrant and Assent of the Sheriff, the Bond is void, 2 *Brownl. Rep.* p. 280. *Chamberlain* and *Goldsmith.* 1 *Rolls Abridg.* p. 417. *Norton* and *Sims*.

A Bond to save *J. S.* harmless from such an Appeal of Robbery as *B.* had against him, is void, 18 *E. 4.* 28.

A Condition to renounce an Administration is good, 25 *E. 4.* 30.

A Condition that he should not molest or hurt the Obligee in his Lands or Goods *ratione alieni rei cuiuscunque*; it shall be intended he shall not hurt tortiously; but not to restrain him from prosecuting the Obligee for Felony, or other just cause, and so not against Law, *Crook Eliz. fo.* 705. *Dobson* and *Crew.*

Conditions against Statute-Law.

Against the Stat. 32 *H. 8.* Of Leases made to Aliens.

DEbt upon Bond to perform Covenants in an Indenture, which was to pay Rent. The Defendant pleads Stat. 32 *H. 8.* which makes Leases to Alien Artificers void, and saith that the Defendant was an Alien born at *Paris*, and avers the three points of the Statute. 1. That the
House

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House was a Mansion House at the time. 2. That he, (*viz.*) the Defendant was an Alien. 3. That he was an Artificer. The Plaintiff replies, the Defendant was an Alien Artificer; demurr. *Per Cur.* the Replication not double; but because he had not said the place where he was born in England, it was ill, *Siderfin p. 357. Freeman and King.* The Form of the Plea, *Vid. 1 Saunders 5. Jevens and Harwich, Vid. Keble.*

Against Stat. 5 & 6 E. 6. c. 16. Of buying of Offices.

THE Office of Armourer is within that Statute, *Stiles Rep. f. 29. Hill and Farmer.*

The Office of Secretary of Barbadoes, which is averred to be an Office of Justice, and being by a Grant by Patent under the Great Seal, is within the Statute; so if it were an Office in the Admiralty or Spiritual Court, 3 *Keb. p. 26. Dawes and Painter.*

A Condition to perform Articles. That he before Easter Term next following, at the Request of the Plaintiff, would surrender to the Plaintiff his Letters Patents of the Stewardship of Bromes Grove, to the intent that he might renew the said Letters Patents in his own name. Adjudged that the Stewardship of a Court-Leet is within the Statute 5 E. 6. and so an Agreement to Surrender, 1 *Brownl. Rep. 71. Williamson and Barnsley.*

Debt sur Bond. *Coleshil* the Testator had the Office of Surveyor of Customs by Letters Patents to him and his Deputies; and by Indenture between him and *Smith* for 600 l. paid and 100 l.

per annum to be paid during the Life of *Coleshil* makes Deputation of the said Office to *Smith*, and *Coleshil* covenants with *Smith* that if *Coleshil* die before him, that then his Executors shall repay to him 300 *l.* and *Coleshil* was bound to *Smith* for performance: *Per Cur.* the Bond was void, 2 *Anderson* p. 55, 107. *Lee* and *Coleshil*, cited in *Twinn's* Case. 3 *Rep.* 82, 83.

The Bayliff of the *Sarvoy* is an Office in fee; he deputed *Ellis* for 30 years, who for Rent reserved substituted the Defendant, who replied this matter. This is not within the Statute, or if it be, its excepted by the Proviso. The Franchise it self being in Fee, Priviledge doth protect all inferiour Grants; as the Marshal may grant Under-Marshal, &c. for Precepts. The accounting for the Profits will be no selling within the Statute; and the making a Reservation is no more. And the King may grant this Office of Bailiff, and there is 40 *l.* *per annum* reserved by the King. And the Bailiffwick of *Southwark* is granted for Mony, 1500 *l.* was paid for it: And the Bailiffwick of *Westminster* is sold reserving Rent, 3 *Keb.* 659. *Ellis* and *Nelson*. The Statute 27 *H.* 8. c. 24. is indeed a general Statute, but the King is out of that Statute, as well as out of 23 *H.* 6. c. 10. 3 *Keble* 679.

The Plaintiff made the Defendant Deputy-Searcher, and allows him one half of the Profits, reserving the other to himself, good: Had it been to render a Rent or pay a sum in gross, it were within the Statute; but Sheriffs, Chyrografs and most other Officers that make Deputies, do it to account of Fees, 3 *Keb.* 717, 718. *Welsh* and *Baden*.
Against

Against Stat. 16 Car. 2. cap. 7. Of Gaming.

A Bond upon Articles of an Horse-race for 300 *l.*
It was to run four heats, on request for 40 *l.*
and again the same day for 100 *l.* The Action is
only for the 100 *l.* The Bond is forfeited, though
there is not above 100 *l.* lost at any one time.
As a Bond to run three several days, it is forfeited
on the first loss, and though no more be played or
lost, yet the Bond is void or any other Security
that is entire; for it is lookt upon according to
the first contract, and not to the contingent, whe-
ther more or fewer times be played. Also a Bond
of 1000 *l.* to pay all such Mony as is lost by
Gaming at such a time, though only an 100 *l.*
be lost; this Bond is within the Statute, 3 *Keb.*
Hill. 25 & 26 *Car. 2. p. 254, 259. Edgbury and*
Rosindale. So where it is to game at several days,
and the one day the Plaintiff wins of the Defen-
dant 100 *l.* and the other the Defendant wins of
the Plaintiff 100 *l.* this is void, *ibid.*

If *A.* loseth to the Plaintiff 90 *l.* at Most at
three throws, and at the same time he lost to *B.* at
Cards 30 *l.* and to *C.* at Bet 60 *l.* more, and gives
Bond, the Bond is void, though these are not Par-
ties together, or in Trust one for another. It is
not material to whom the party comes indebted;
for the Statute is that the party should not lose
more than an 100 *l.* at one time or meeting upon
Ticket; and *per Cur.* all plaid for on Ticket is
void, 3 *Keb.* 671. *Hudson and Malins.*

There was lost at play a Ring of 20 *l.* value
which was paid, and there was also lost at play at
the

the same time 100 *l.* upon Credit, for which Bond was given, this 100 *l.* is not within the Statute; and Judgment for the Plaintiff, *Siderfin* p. 394. *Danvers* and *Thistlethwait*, 2 *Keb.* 369, 389. 451. If 500 *l.* be paid down, and not above 100 *l.* besides upon Credit, it is not within this Law. *Per Keeling* and *Twisden*, If one loseth a 1000 *l.* presently, and loseth an 100 *l.* in Rings present, yet he may lose 100 *l.* on Ticket, 2 *Keb. id.* Case.

Against Stat. 31 Eliz. cap. 6. Concerning Simony, and what is not.

THE Patron takes an Obligation of the Clerk (which he presented) that he should pay 10 *l.* to the Son of the last Incumbent yearly, so long as he should be a Student in *Cambridge* unpreferred, *per Cur.* this is not Simony. So to pay 5 *l.* yearly to the Wife and Children of the last Incumbent. *Aliter*, if it had been to pay it to the Son of the Patron, *Noy* p. 142. *Abigail Baker* versus *Mountford*.

If a Man be bound to a Stranger to present *J.S.* to a Benefice, and he presents him upon a Simoniackal Promise with another Stranger, yet the Bond is forfeited, by *Hobart* p. 167. in *Winchcomb's* Case.

A Condition for performance of Covenants. The Defendant demands Oyer of the Condition and pleads performance. The Covenants were in consideration of a Marriage, *M.* was to pay 300 *l.* and other Covenants; and there was one, that *M.* will procure *B.* to be presented, &c. into such

such a Benefice upon the next avoidance, and the Breach was assigned in this: *Per Cur.* had it appeared that on consideration of the Marriage he covenanted this, &c. it had been a Simoniackal Contract, and had avoided the Obligation: But this is a meer Covenant by it self, and without special shewing or averring it was upon a Simoniackal Contract, it shall not be so intended, *Cro. Car.*

425. *Byrt and Manning.*

A. is bound to *B.* on Condition, That whereas *A.* is in a short time to be presented, instituted and inducted to the Church of *D.* if *A.* after his Admission, Institution and Induction at all times on the request of *B.* his Heirs, &c. resign the said Rectory and Church to the Ordinary or Guardian of the Spirituality for the time being, by which *A.B.&c.* may present anew to the said Church. This is a good Condition in it self without averment that it was for a Simoniackal purpose, 1 *Rolls Abr.* p. 417. *Mich. 14 Car. B. R. Cary and Yeo.*

J. had a Son which he intended to be a Clergy-Man, and having obtained a Presentation from Queen *Eliz.* for the Church of *S.* agreed with the Defendant that he should be presented, so that he would resign when the Son of *J.* was qualified. Whereupon the Defendant entred into a Bond of 1000 *Marks* on Condition (having first recited the Agreement) that if the Defendant within three Months after request should absolutely resign the said Benefice, that then, &c. In Debt on this Bond the Defendant pleads *non requisivit*, which was found against him. And in Arrest of Judgment it was moved, that this Bond was made on Simoniackal Contract, and so void: But the Court

gave Judgment for the Plaintiff. 1. Because there was no Averment of the Simony. 2. That it was not material as to the Bond, because that Statute doth not make the Bond or Contract void, but only the Presentation. The sense of the Court in that Case was, that in truth, if a Man be preparing a Son for the Clergy, and have a Living in his disposal, which falls void before his Son be ready, he may lawfully take of such person, as he shall present, a Bond to resign when his Son is become capable of such Living. But if a Patron take a Bond absolutely to resign upon Request without any such cause as the Presentment of a Son, or to avoid Pluralities or Non-Residence, or such reasonable cause, but only to a corrupt end to exact Mony by this Bond from the Incumbent, or attempt it; tho the Bond may be good against the Obligor, yet it makes the Church become void, and gives the Presentation to the King. It seems in this Case, if Simony had been averred, it would have been left to a Jury to have adjudged what the intention of the corrupt Patron was, *Crook Trin. 8 Jac. 248, 274. John and Lawrens, Sir Simon Degg p. 54, 55, 56.*

Such a Condition was in *Wood and Babington's* Case, to resign into the hands of the Bishop of *London*. Upon Oyer of this Bond and Condition the Defendant demurred. Judgment *pro Querente*. But *per Cur.* If the Defendant had averred that the Obligation had been made with intent to exact Mony, make a Lease, &c. which in it self had been Simony, then it might have been a Question, whether this Bond had been good or not; but upon this Demurrer it doth not appear there

there was any Simoniacal Contract, and such Bonds might be for good and lawful ends, *ut supra*, *Crook Car.* 180.

A Condition to resign on Request; which was, If *Jo. Watson* do and shall upon the first of *Octob.* next, or before, if the said *William Baker* at the Parsonage-House of *Cowley* shall request the same, and before *John Watson* shall take another Benefice, in due manner resign the said Rectory, Parsonage or Benefice of *Cowley* aforesaid unto the Bishop or Ordinary of the Diocess, whereby the Rectory may become void, and the said *William Baker* may lawfully present to the same; then this Obligation to be void. The Defendant after *Oyer* pleads Resignation; the Plaintiff replies he did not resign. *Et hoc petit &c.* The Defendant demurs, for that the Condition is void. *Per Cur.* it hath been above a dozen times adjudged that the Condition is good. *Quære*, if the Resignation shall be tryed *per pais* or by Certificate, 2 *Keb.* 446. *Siderfin* p. 387. *Baker and Watson.* *M.* 20 *Car.* 2. B. R.

In Debt on Bond for payment of Mony at a day certain. The Defendant pleads it was made upon a Simoniacal Contract for the Presentation to a Benefice, &c. *per Cur.* it is no Plea, because it was averred by matter *dehors*, and appeared not within the Deed; and an Averment shall not be, that it was paid for other causes than the Obligation expresseth, *More n.* 729. *Noy* p. 72. *Gregory* and *Older.*

The Condition was, if *Web* the Patron presented the Defendant, and if the Defendant continued Incumbent for a year, and after the year
at

at all times within three Months after Notice and Request was ready to resign, and did resign the Benefice to the Ordinary to be presented thereto again by *Web*, and should not before resign, that then, &c. The Defendant pleads *Stat. 13 & 14 Eliz.* and that after he was inducted, he made a Lease to the Plaintiff of the Benefice for 21 years, and averred the Obligation was made for enjoying the Land by Lease. The Plaintiff demurs. *Per Cur.* the Plea was good, but the Averment not sufficient. Judgment *pro Quar. More n. 835, Web and Hargrave.*

Against Stat. 13 Eliz. c. 20. 14 Eliz. c. 11. Of Non-Residence.

NO Lease to be made of any Benefice or Ecclesiastical Promotion or any part thereof, and not being impropriated, shall endure any longer than while the Lessor shall be ordinarily resident and serving the Cure of such Benefice without absence above 80 days in any one year. And all Bonds and Covenants for suffering any such Parson to enjoy any such Benefice with Cure shall be void, *13 Eliz. c. 20. 14 Eliz. c. 11.* either by Parson or Curate; the Lease was made to the Curate who leaseth over. *Qu.* If the absence of the Parson shall make the Lease void, *1 Leon. p. 100. St. John and Petit's Case.*

Upon the Statute *13 Eliz.* of Leases made by Parsons, that upon Non-Residence for 80 days the Lease shall be void; this Statute voids Bonds for Non-Residence.

If the Condition be, that after Institution and Induction he shall at all times after be ordinarily resident, and serve the Cure without being absent 80 days during any one year, that he shall be Parson of the said Church; this is a good Condition without Averment taken to be for a Simoniackal purpose, 1 *Rolls Abr.* 417. *Cary and Yeo.*

The Condition was, that if the Defendant be not absent 80 days from his Benefice, nor resign without the assent of his Patron, then, &c. The Defendant pleads *Stat. 13 Eliz.* That all Leases of Parsons made of their Benefices where they are absent 80 days, & *ultra*, and all Obligations for enjoying them shall be void; and saith he was absent by the space of 80 days, and saith not & *ultra*, it was held an incurable fault in the Plea, *Cro. Eliz.* p. 88. *Gosnal and Kindlemarsh.* Such another Case in *Crook Eliz.* p. 490, Earl of *Lincoln* versus *Hoskins.* Such a Plea was naught. 1. The Statute was misrecited *tam diu* (where the words are *tam cito.*) 2. Because it is not alledged that he was absent; for otherwise neither Lease nor Bond are void.

Against Statutes of Usury, 13 Eliz. c. 8. 21 Jac: 12 Car. 2. c. 13. How and when such Obligations become void or not, and the Pleadings thereon.

IF the Contract be not usurious, it shall not be made Usury by mater *ex post facto.* A Bond for 60 l. and gave Bond to pay it and 6 l. Interest at the end of the year; and before the end of

of the year, the Obligor pays 6 *l.* for Interest, it is not Usury, 1 *Bulstr.* 17. *Anonymus.*

A Condition to pay 20 *l.* *per annum* during Life, it is no Usury, but an absolute Bargain; had there been any provision made for Re-payment of the principal, although not expressed within the Bond, it had been an usurious Contract, 1 *Leon.* 36. *Crook Jac.* 252. *Fountain and Grimes.*

Debt *sur* Bond of an 100 *l.* dated 12 *July*, with a Condition for the payment of 54 *l.* at the end of six Months. The Defendant pleads the Statute 21 *Jac.* of Usury. The Plaintiff replies, he lent the 50 *l.* for one year, and that the Defendant should pay 8 *l.* for the forbearance for a year; and by the Scriveners mistake it was made payable at half a years end; and he being illiterate and not knowing thereof, accepted the said Bond. The Defendant rejoins the Lending was only for half a year, and that he was feign to pay 8 *l.* for it for that time, and traverseth that on the said 12th of *July* that he should forbear it for one year. The Plaintiff demurred; Bar ill, because he saith not *corrupte agreeat.* And *per Cur.* this Allegation may well be made against the words of the Condition; for it is the shewing of the true Agreement, which was according to Law: And the Rejoynder is not good, because he makes the day thereby to be parcel of the Issue, which ought not to be, but he ought to have traversed the Agreement only, *Crook Car.* 501. *Jones* 396. *Newison and Whistly.*

Debt *sur* Bill. The Plaintiff declares, the Defendant 20 *Apr.* 1633. by his Bill became bound to him in 7 *l.* to be paid 21 *Apr.* 1634. and if default of payment was, he granted to pay 3 *s.* 4 *d.* for

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for every month it should be in arrear. The Defendant pleads that upon the lending of the 7 l. to be paid at the end of the year, it was *corrupte* agreed to pay 3 s. 4 d. *ut ante*. Had it been well pleaded it had been good; for it is not averred that the Agreement was to pay 3 s. 4 d. for every Month *pro lucro interesse & diem dando solutionis*; nor doth he aver the words of the Statute, that *ultra 8 l. per cent.* shall be taken for Usury, *Jones p. 409. Swales and Bateman.*

In Debt *sur* Bond made at S. the Defendant pleads the same was made upon a corrupt agreement at another place; the Plaintiff replied, that it was made *bona fide*, and traverseth the corrupt Contract. *Venue* was from the place where the corrupt Contract was laid to be, and good; and not from both places, 2 *Bulstr. p. 34. Stanton and Barton.* Not from the place where the Bond was made, 1 *Leon. p. 148, 149. Crook Eliz. 195. Kinerly and Smart.*

The Condition if he pay (for 100 l.) 20 l. at half a years end, if *J. S.* be then living, and if not, then but a less Sum than the Principal, it is usurious (he averred the 20 l. amounted to above 10 l. per Cent.) for by the same reason he may add 20 Lives, 2 *Anders. 15. 5 Co. Rep. 70. b. Clayton's Case, More n. 497. Crook Eliz. p. 642. Button and Downham.*

The Defendant pleaded *quod corrupte agreeat. fuit, & quod quer' corrupte recepit*; and on Issue on them found for the Defendant in both, and good; for one is not material, *More n. 750. Johnson and Clark.*

A. lent B. an 100 l. for a year, and took an Obligation for 10 l. Interest (Mony being then at 10 l. per Cent.) payable 5 l. half yearly: Per Cur. it is not Usury deins Stat. More n. 842. Worley's Case, Noy p. 171. Cro. Jac. 25.

Debt upon an Obligation of 100 l. the Case was, *Warnes* was indebted to *Alder* in 100 l. upon an usurious Contract; and *Alder* was indebted to *Ellis* the Plaintiff in 100 l. the just Debt for which *Warnes* and *Alder* were bound to *Ellis*. The Defendant pleads this Usury between him and *Alder* to avoid the Bond. The Plaintiff replies, *Alder* was justly indebted to him 100 l. and the Defendant and *Alder* became bound for this Mony, and that he was not privy to the Usury between *Warnes* and *Alder*, and good; and the usurious Contract between *Warnes* and *Alder* shall not prejudice the Plaintiff, *Yelv. p. 47. More n. 981. Crook Jac. 32. Ellis and Warnes. 1 Brownl. 85.*

A Condition to save the Plaintiff harmless from one Obligation, wherein the Plaintiff was bound as Surety for the Defendant to *J. S.* The Defendant pleads that the Bond to *J. S.* was upon usurious Contract, and pleads the Statute & sic non damnificat. it is no Plea, for he ought to save his Surety harmless, and it shall not be intended the Surety knew of the usurious Contract, *Crook Eliz. 643. Button and Downham. 3 Leon. 63. Potkin's Case. Contra Crook Eliz. 588. Robinson and May, 2 Leon. 166. Basset and Browns Case.*

If there be an Agreement after the Forfeiture of a Recognisance, and the second Defeasance is for more than 10 l. per Cent. according to the print-

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principal Debt, yet it is not *deins Stat. 13 Eliz.* but before the Forfeiture, it had been otherwise; and it is not for forbearance of the first principal but of the penalty, *Noy p. 2. Hollingworth and Parkhurst.*

If a Debt be brought on an Obligation, and it is found for the Plaintiff; now the Defendant shall not have *Audita Querela* upon a Surmise that it was an usurious Contract, for he might have pleaded that, *Noy p. 123. Cook versus Wall.* Or if he be condemned on *nil dicit*, *Crook Eliz. p. 25. Fisher and Banks.*

If an Executor pay an usurious Bond, other Creditors may make a *Devastavit* of it, *per Hob. p. 167.*

The Condition was to pay the principal Debt at the end of the year with Interest that should be then due. It was a *Quere*, if any Interest should be paid, and not resolved. See there *Noy's* Argument of the odious Sin of Usury, *2 Rolls Rep. p. 239, 240. Sanderson and Warner.*

The Defendant pleaded the Statute of Usury to a Bond, and sheweth that a Ship went to fish in *Newfoundland*, and that the Plaintiff delivered 50*l.* to the Defendant to pay 60*l.* on the Return of the Ship to *Dartmouth*; and if the Ship never returned, he should pay nothing, it is not Usury, *Cro. Jac. p. 208. Sharply versus Hurrel, 1 Brownl. Rep. p. 52.*

The Defendant pleads the Statute of Usury made 6 Febr. 13 Eliz. (whereas the Parliament began 2 Febr. 13 El.) and that the Obligation was taken by Usury. The Plaintiff replies it was not made for Usury *contra formam Statuti modo & forma*

forma præd. and at Issue found for the Plaintiff, yet a Repleader was awarded after Verdict; for the Court held no Judgment could be given for the Plaintiff, as well knowing there was no such Statute, *Cro.El.p.245. Love versus Wotton.*

Debt on an Obligation with a Condition of Bottomree to pay 130 *l.* when the Ship should return from *Norway*. The Defendant after *Oyer* pleads corrupt Agreement for lending 50 *l.* to pay according to the Condition. The Plaintiff demurred: *Per Cur.* it is not Usury, 1 *Keb. 711. Appleton versus Bryan.*

In Debt upon an Obligation, after *Oyer* the Defendant pleaded an usurious Contract to receive more Interest than due, to which the Plaintiff demurred, because it is not said that at the time of making the Bond it was corruptly agreed; and the other doth but incur the penalty of the Statute, but doth not avoid the Security, which the Court agreed, 2 *Keb. 525. Farrel versus Shaw.*

The Defendant pleads an usurious Agreement, that the Plaintiff lent the Defendant 10 *l.* and if the Ship return, to pay him 3 *l.* The Plaintiff demurred: *Per Cur.* this is good and bare bottomree, 3 *Keb. 62. Cham and Taylor.*

The Defendant pleads *Stat. 12 Car. 2. c. 13.* and said the Contract was usurious; but *per Cur.* being made after the Bond forfeited to receive Interest according to the penalty which was double the principal, it avoids not the Obligation which was good at first, but only subjected the taker to other Penalties, 3 *Keb. 142. Radly and Manning.*

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The Defendant pleads 12 *Car. 2. cap. 13.* to which the Plaintiff demurred, because in recital of the Statute, the word *made* is left out, and Plea ill, 3 *Keble p. 618. Gilmore and Isles.*

Debt on Obligation to pay 100 *l.* on Marriage of the Daughter, and if either Plaintiff or Defendant die before, then nothing; the Defendant pleads that of Usury, and that this was for the Loan of 30 *l.* before delivered; the Plaintiff demurred: *Per Cur.* this is plain Bottom-ree, 3 *Keble p. 304. Long and Wharton.*

The Condition was, If such a Ship go to *Surat* in the *East Indies*, and return safe to *London*, &c. or if the Owner or the Goods return safe, &c. that the Defendant shall pay to the Plaintiff the Principal, and 40 *l.* for every 100 *l.* but if the Ship perish by unavoidable casualty of Sea, Fire or Enemies, then the Plaintiff to have nothing: *Per Cur.* this a good Bottomree Contract, and not Usury; and *Bridgman* took the difference between a Bargain and a Loan, for where there is a Bargain *de plano (as here)* and the Principal hazarded, this is not within the Statute of Usury; aliter of a Loan which is intended where the Principal is not hazarded, *Siderfin p. 27. Soame and Green. Cro. Jac. 252. Fountain and Grimes.*

There are two Clauses in the Statute of Usury, 12 *Car. 2.* If there be a corrupt Agreement at the time of the lending the Money, then the Bond and all Assurances are void; but if the Agreement be good, and afterwards he receives more than he ought, then he forfeits the treble value, *Per Twissden, Mod. Rep. 69. 1 Sanders p. 294. Ferral and Shacen Knight and Baronet, and the Pleadings.*

Debt on Bond 24 May, 19 Car. 2. The Defendant prays Oyer of the Condition, which is for 300 l. to be paid 25 Febr. 20 Car. 2. and upon Oyer the Defendant pleads in Bar, *quod post confessionem scripti obligatorii præd' scil. 10 May, 20 Car. 2. The Plaintiff corruptive recepit de Defendant 30 l. pro differendo diem solutionis præd' 300 l. pro uno anno integro (videlicet) &c. quod est ultra ratam 6 l. per cent. per annum, contra formam Statuti per quod scripti obligator' præd' vacuum devenit, & hoc, &c.* The Plaintiff demurs: Plea is not good, for the new Statute of Usury 12 Car. 2. cap. 13. saith, That all Bonds for payment of any Mony for any Usury; and here the Bond is not for payment of Monies upon Usury, for it might be for a just Debt, and the usurious Contract after shall not hurt it; but its punishable. 1 Sanders page 274. Ferrall and Shaen.

If in truth the Contract be usurious against the Statute, no Colour nor shew of Words will serve, but the Party may shew the same, and shall not be concluded or estopped by any Deed, or any other Matter whatsoever; for the Statute giveth averment in such Case, 5 Rep. 69. b. *Burtons Case.*

5 Rep. 70. *Claytons Case*, uncertain, and yet Usurious, and *Burtons Case*, Moor n. 497. id. *Case.*

The Defendant pleaded the Statute of Usury, alledging that *agreeatum fuit*, that the Plaintiff should have so much Mony *pro donatione diei solutionis*; the Plaintiff traversed *absque hoc quod agreeat' fuit*, and found for the Plaintiff; it was moved

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moved in Arrest of Judgment, that the word (*corrupte*) was not pleaded in the Bar; resolved, the Bar was made good by the Replication; and the Declaration being good, Judgment *pro Quer.* Moor n. 624. *Rogers and Jackson.*

Where (*per Twisden*) the Contract was not Usurious, but a Purchase of an Annuity for three years, *Siderfin* p. 182. *Rowe and Bellas.*

Against Stat. 23 H.6. cap.10. Sheriffs Bonds void.

THE intent and reason of this Statute.

This Statute hath three notable Branches.

1. Commandment and Authority to the Sheriff to let to bail such Persons as are mainpernable; so Coroners, Stewards of Franchises, Bailiffs, Keepers of Prisons; and this is in affirmance of the Common Law.

2. A restraining Branch, that they shall not let to bail such Persons as be in their Ward by Condemnation, Execution, *Capias Utlegatum*, or Excommunication, Surety of the Peace, and such as shall be committed by special commandment of the Justices, and Vagabonds; this is in affirmance of the Common Law.

3. The third is to make Obligations taken in any other form than the Statute limits, to be void. That no Sheriff, nor any of his Officers and Ministers, aforesaid, shall take or cause to be taken, or make any Obligation for any Cause aforesaid, or by colour of their Office, but only to themselves

selves of any Person, nor by any Person which shall be in their Ward by the course of the Law, but by the Name of their Office; and upon Condition written, that the said Prisoners shall appear at the day contained in the said Writ, Bill or Warrant; and in such places as the said Bill, &c. shall require; and any Obligation taken by them in other form shall be void.

The design of this Statute is to provide against the Extortion of Sheriffs, *Plow. Dive and Mannings Case.*

Explication del Statute.

THESE words (*for any cause aforesaid*) refer to all that went before, as well those contained in the Exception, as in the first Branch; therefore a Bond taken of a Man in Execution is void by this Statute; and the Surety may plead this, and the words *colore officii* make it void, for he was taken by him in Execution as Sheriff, and he lets him to bail, which is not mainpernable, *Plow. 69, 80. Dive and Manningsham.*

This is a particular Law, and ought to be pleaded, *Dive and Manningsham Case, Plowd. Parker and Weblyes Case in Siderfin, and Siderfin p. 24. Allen and Robinsons Case. Hobart p. 13. contra 3 Keble 320, 361. Oakes and Cell. The Statute is not as in Print, that the Sheriff nor any de ses, but any des Officers or Ministers of Justice, 3 Keble 71. Munday and Frogat.*

A Covenant is not within this Statute, *Hob. p. 13. Sir Daniel Nortons Case.*

This Statute hath two parts, one for the Benefit of the Sheriff, (*viz.*) That he shall take Obligations with single Sureties, which is for his Indempnity, that if he be amerced for non-appearance of the Party, he shall have his remedy; the other for the benefit of the Party, so the Statute prescribes the Form, and that the Sheriff under colour of his Office, should not oppress the Party to make him any other manner of Obligation, for the Statute makes the Obligation void, for not pursuing the Form, but not in the Matter thereof; therefore the Sheriff may take one Surety, or two, one being a Stranger that hath nothing in the County, *Cro. El.* 808. *Sir George Glyfson versus Webb.*

At the Common Law the Sheriff was not compellable to take Bail of any; and the Statute compels him to let to bail, and therefore no Action lies against the Sheriff for not having the Body at the day; the Statute saith sufficient Sureties, but that is for his own indempnity, which he may waive, and take what Sureties he thinks fitting. The Statute saith, The Obligation taken in any other Form than is there prescribed shall be void; and within the Statute are three Forms to be observed, *2 Leon. fol. 78. Seckford and Woolverton.*

1. That it shall be made to the Sheriff himself.
2. That it shall be made to him by the Name of his Office.
3. That it shall be only for appearance at the day; but the insufficiency of the Sureties is Matter, and not Form, and the Obligation is not void, *Cro. El. p. 862. Mich. 43 El. 1. Cotton vers. Wale, mesme Case, 2 Anderson 175.*

The Statute was made for the Prisoners benefit; for the Mischief before was, That the Sheriff not being compellable to bail him, would extort Mony from him to be bailed, *Modern Rep. p. 228.*

At Common Law if the Sheriff had taken any Man by Writ of the King, he might not be delivered but by *brevve de homine replegiando*, 2 *Sanders* 60.

This Statute does not extend to Fees or other Collaterals, only matter of Imprisonment *colore Officii* is taken in *malam partem*, as Extortion is, *Gr. 2 Keble* 422.

One in Execution escapes, and is retaken, and then a Bond is made for his enlargement; this is *colore officii*, and *deins Stat. 2 Leon. 118. Philips and Stone.*

If a Sheriff take a Bond for a true Debt, its good, because not *colore officii*.

The Warden of the *Fleet*, and the King Palace at *Westminster*, are excepted out of this Act.

If the Statute be misrecited, it may be demurred to, as he recited, if any Sheriff *aut ejus Officiarii*, where it should be *alii Officiarii*, *Cro. Eliz. 108. Trussel and Aston. Q.* if the Court will take notice of this by the printed Book, or by the Record, or otherwise, *Siderfin p. 356. Holby and Bray.* As to misrecital, *vide 2 Keble 278. Pench and Woodnoth.*

The Sheriff's Return upon this Statute.

Action upon the Case brought against the Sheriff, because he took *J. S.* and returned at the day, *Cepi Corpus*, and yet had not the Party at the day, but suffered him to escape, but he returned *paratum habeo* (which was false,) The Defendant pleads he being arrested, put in *J. B.* and *J. C.* Sureties, and pleaded *Stat. 23 H. 6.* and so let him at large; the Plea is good, for the Sheriff is compellable to take Bail, but what Bail is left to his discretion, and for his false return of *paratum habeo*, he is amercible to the Court, and that is nothing to the Party, *Cro. El. p. 624. Barton and Aldworth.* And this is a good Plea for the Sheriff to plead not guilty in such a Case; but if the Sheriff demurs to the Declaration, then the Action lies against him, for the Declaration shall be taken to be true upon the Demurrer, for the Statute is private, and the Court will not take notice of it unless it be pleaded, *Siderfin H. 21 and 22 Car. 2. Parker and Welby, 1 Rolls Abr. 92. Mod. Rep 244. Page and Tulse. Mod. Rep. 57.* But if the Defendant had pleaded this specially, or had pleaded *non cul.* he might have had advantage of the Statute, and ousted the Plaintiff of his Action, *Moor n. 428. Cro. 3. 460. Langton and Gardners Case.*

After this Statute the Sheriff may not make a Special Return, but only *Cepi Corpus*, or *non est Inventus*, *Franklin and Andrews Case*, cited in *Siderfin* in *Parker and Welbyes Case*, p. 23.

If the Sheriff return *Languidus*, yet if he took Bond according to the Statute, no Action upon the Case lies against him, but he is amercible, *Cro. Eliz.* 852. *Boles* and *Lassels*. The Sheriff shall be amerced until he assign the Obligation to the Plaintiff, *Siderfin* p. 23.

If Bail be taken by the Statute 23 *H.6.* and the Sheriff return *Cepi Corpus*, and the Party appear not at the day of the return (being in mean Process) the Sheriff shall not be charged in *Action sur Case*, for this would be to frustrate the Statute 23 *H.6.* but then it must appear to the Court on the Record, that it is on the Statute 23 *H.6.* and not a return at Common Law, *Siderfin* 22. *Allen* and *Robinson*.

If the Sheriff refuse to take reasonable Bail, Action upon the Case lies against him; and if he refuse to take Bail, he is liable to an Action of false Imprisonment, *Siderfin* p. 23.

An Action upon the Case against the Sheriff *pro Escape*; the Defendant pleads the Statute 23 *H.6.* that he let *H.* to bail, and took reasonable Sureties, *A.* and *B.* Persons having sufficient within the County; the Plaintiff replies, *absq; hoc*, That he took Bail having sufficient within the County; the Defendant demurs, Judgment *pro Defendente*, *Mod. Rep.* 227. *Ellis* and *Parborough*.

An Action upon the Case against the Sheriff for not taking reasonable Sureties, nor having sufficient Estates in the said County, and returning *Cepi Corpus*, and yet had not the Bodies at the day, it lies not, for he is compellable to let to bail, and if he have not the Body he shall be amerced; and because he shall be amerced the Statute

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Statute gives him advice to take sufficient Sureties for his own Indemnity, 2 *Sanders* p. 59. *Posterns Case*. Vide the Declarations and Pleadings in that Case there.

An Action upon the Case for taking insufficient Bail; the Defendant pleads he had taken sufficient Security; he need not say where, nor need he traverse the intent to deceive the Plaintiff of his Debt, *Siderfin* p. 98. *Bently and Hore*. Q. of this Case.

What Obligations and Conditions shall be void by this Statute, and what not.

IF the Obligation had one part of the Condition according to the Statute, and the other not, all shall be void, *Plow. Dive and Manningbalm* p. 68. b. Vid. *Palmer Rep.* 378. *Noel and Cooper*, Vic. in Com. perdit. pro prædict. its void.

An Obligation to the Sheriff to appear and answer, &c. is void by the Statute 23 H. 6. aliter to appear to answer, for the Party by the Law may appear, and yet Judgment may be given by default, *Noy* p. 54. *Lord Evers Case*.

The Condition to make an appearance; Q. if good, *Noy* p. 172. *Rowles and Fow*.

Obligation taken by the Sheriff after the day of the return is void by the Statute 23 H. 6. *Siderfin* p. 301. *Rods Case*. 3 *Keble* 260. and so not a single Obligation.

Obligation taken by the Sheriff for an appearance at *Westminster*, and the Term was adjourned to *St. Albans*, and the Party appeared there, he had not forfeited his Obligation, *Moor* n. 578. *Corbet and Downing*.

Ad

Ad respondend. de placito debiti in general, without mentioning the Sum is good; the Bond ought to be made to the Sheriff by the name of his Office, and ought to express the day and place of his Appearance; and these Circumstances being observed, though it be variant in other Circumstances, its not material, *Cro. M. 9 Jac. 286. Villers vers. Hastings.*

The taking of a Bond of 40 l. by the Sheriff, is sufficient cause to excuse him from a mistake; yet he may take Bond for a greater Sum, *Cro. Jac. 286. Villers and Hastings.*

Debt sur Bond, the Writ was *ad respond. H. G. nuper Vac. Norff.* and the Count was, *quod concessit se teneri præfat. J. H. in prædict. 40 l.* and saith not *tunc Vic. Norff. existen.* and *per Cur. sur Demurrer sur le bar* (where the Statute was pleaded) the Count was insufficient, *Cro. Eliz. p. 800. Guibon and Whytost contra, 3 Keble 191, 201. Twisleton and Druthin*, for no advantage can be taken against the Bond except it were entred.

The Condition was, If the said *J. D.* personally appeared, &c. *a die Pasc. in 15 dies*, to answer to *J. H.* as shall appertain, and farther, to do and receive as the Court therein of him shall consider in that behalf, that then, &c. its a void Bond, *Cro. El. p. 672. Scriven and Dytter.*

The Condition was, That if the Defendant do appear in *B. R.* such a day, then the Condition of the said Obligation to be void, yet *per Cur.* both good, for if those words were omitted its but surplusage, *Siderfin 456. Maleverer and Hawksby, 2 Keble 625.*

The Writ is *placito Transgr.* the Condition of the Bond is to answer the *ac etiam Billæ* 100 l. in *placito debiti* is void, being another Writ; but if the Writ were in *placito debiti*, or the Bond taken only to answer the Writ in *placito Transgr.* it were well enough; and a *nil Cap. per Bill.* awarded *sur demurrer* by the Plaintiff, upon the Defendants Plea upon the Statute it being in *alia forma*, 3 Keble 164. *Mildmay* and *Cage*, and p. 711. *Moor* and *Finch*.

A Writ out of *B. R.* returnable out of Term, the Sheriff takes the Party, and takes Bond to appear at the day of the return, and for non-appearance brought Debt upon this Obligation, this Bond was void *per Statute*, and the Sheriff shall not be amerced for the non-appearance, nor liable to any faux Imprisonment by the Party, 2 *Siderfin* p. 129. *Jenkins* and *Hatton*.

The Bond not being taken by the Sheriff in the name of his Office, in *Debt sur Obligation* the Defendant demurs upon Oyer, *sed non allocatur*, for the Statute is not pleaded, and it may be for a just debt, 2 Keble p. 620. *Faques* and *Reyner*.

A Condition to appear before his Majesties Justices of *B. R.* in *Westminster*, the Defendant pleads the Statute 23 *H. 8.* and that this was *alia forma*, it should be *coram Dom. Rege ubicunq;* &c. yet adjudged good; the Statute is not to be avoided by such mistakes of returns, 3 Keble 611, 551, 627.

The Condition is, If such a one who was arrested *sur Lat.* appeared personally and answered, &c. in regard his appearance is necessary to put
in

in special Bail, if the Party requires it, the Bond is good, *Cro. Eliz.* p. 776. *Bowels* and *Hearster*.

If Obligation be taken by the Sheriff after the day of the return its void by the Statute, and is not a single Obligation, for the Party so taken after the return may not be bailed without coming before a Judge, and he may not do this out of Term without consent of the other Party, *Siderfin* p. 301. in *Courtney* and *Pbelyn*.

A Bond or Covenant for Fees is void; a Bond for true Imprisonment is not void, *prima facie*, without Circumstances, &c. a Bond for Chamber-rent is void by Common Law, because the Party is *contra voluntatem* restrained, and shall be imprisoned till payment, to which the Court agreed; also the Statute extends only to the Marshal for such Bonds as they may take *virtute officii*, 3 *Keble* 133. *Mosedale* and *Middleton*.

An Obligation taken with one Surety is good, *Sir William Drury's Case*, *Lit. Rep.* 110.

A Bond for Tuition of a Child as Curator, and to give account to the Ordinary, is but a voluntary undertaking of the Guardian, and so not *deins Stat.* 23 *H. 6.* and at Common Law its good, notwithstanding 3 *Inst.* 149. A Bond for due Administration may well be taken by the Ordinary, 3 *Keble* 671. *Bishop of Carlisle's Case*. The Plea that the Bond is taken *colore officii*, will not avoid a Bond taken of the Party to do what he ought, 3 *Keble* 790.

What

What Obligations and Conditions are good or not, in respect of the Persons and Officers, to whom made, and in what Courts.

L. gives Bond to the Sheriff, being arrested by Attachment out of the Chancery; the Condition was, That the Defendant should appear such a day in Chancery *apud Westm. ubicunque fuerint*, this Bond is within the Statute; but here is a material variance in the Bond which makes it void; for the Defendant to be precisely bound to appear at *Westminster*, and then to add *ubicunque fuerint*, *Stiles p. 234. Burton and Low cited in 3 Keble 614. Kirby and Curwin, 3 Keble p. 599. Kirkby and Dicer.*

The King is not *deins Stat. 23 H. 6. 5 Rep. Whelpdales Case, 3 Keble 678. in Ellis's Case, Dyer 119.*

A Serjeant at Arms of *Wales* is not within the Statute, *Stiles 234. Burtons Case.*

A Serjeant at Arms to the House of Commons not *deins Stat. 1 Keble 391. Norfolk and Ailmer.*

Such Bond given to a Deputy of a Bailiff of a Franchise is void, or to an Under-Sheriffs Deputy; it must be to the Bailiff or Sheriff himself, *Noy p. 69. Tavernors Case.*

A Serjeant at Arms attending on the President and Council of the Marshes of *Wales*, is not an Officer within this Statute, *Cro. Car. p. 9. Car. B. R. Johns and Stratford.*

If the Marshal of the Kings Bench takes Bond for the easment and delivery of a Prisoner in Execution, its void by this Statute, though he is not named;

named ; and so many others, *Cro. Eliz.* p. 66. *Bracebridge* vers. *Vaughan*.

The Sheriff by vertue of Attachment under the Privy Seal of the Court of Requests, took the Defendant, and for his Enlargement made the Obligation to appear before the Queens Council, &c. *per Cur.* here is no Warrant to take the Body or the Obligation ; for that Court hath not any Power by Commission, by Statute or by Common Law ; but the Sheriff ought to obey the Process out of the Dutchy Court, for that is appointed by Act of Parliament, and so this is not within the Statute, for the Statute speaks of such who are in their Custody *per* Course of Law ; and so this Obligation taken by Durefs is avoidable, *Cro. El.* p. 646. *Stephens* and *Floid*, *mesme Case*, 2 *Anderson* 122.

If a Bailiff of an Hundred (which is a Franchise) take Bond, he must do it in the Sheriffs Name, 3 *Keble* 71, 117, 127. *Monday* and *Frogat*.

The Bond must be taken to the Sheriff himself, and not to another, *Plow. Com.* 68. *a. b.*

The Statute doth not extend to a Bond made to the Plaintiff himself, *Allen* p. 58. *Leech* and *Davis*.

The Marshal of the Kings Bench is *deins* this Statute, 1 *Keble* 391. 9 *Co.* 98.

On Oyer it was to appear on Process out of Chancery ; the Defendant pleads 23 *H. 6.* that Attachment was out of Chancery delivered to the Sheriff, *retorn. Tres Trin.* and this Obligation was for Ease and Favour ; the Plaintiff shews the Defendant was arrested, and gave this for appearance

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ance on another Writ, *absq; hoc*, that it was for Ease; the Defendant demurs, because the Sheriff cannot take Bond to appear on any other day than in the Writ; *sed per Cur.* the Plea layeth a return that never was, and the Plaintiff sets forth true Bond, and traverseth the Ease, which is as well as can be; Judgment *pro Quer.* 2 Keble p. 526, 596. Maleverer and Redshare.

Plaint in Court Baron of 39 s. and Attachment against the Defendants Goods, and detained till the Bailiff caused 40 l. Bond to be made to the Plaintiff himself, to appear and answer with, and Condemnation by a day; and pleaded *Stat. 23 H. 6.* this Bond is void at Common Law; its void also for the unreasonableness of the Sum extorted, 1 Keble 873.

A Condition to appear in *B. R.* according to custom at the Suit of *M.* on Oyer the Defendant pleads there is no such Custom in *B. R.* as the Plaintiff hath alledged to appear to an *ac etiam Bille*, and so the Obligation void; the Plaintiff demurs, Judgment *pro quer.* because the Statute 23 *H. 6.* which is a particular Statute, is not pleaded, so the Plea ill; but it might be pleaded the Bond was by Durefs, being in other manner than the Statute allows, and that Statute makes the Bond void for the whole, 3 Keble 160, 181. Fortb and Walker.

Debt on Obligation taken *per* the Plaintiff, Sheriff of the Defendant his Clerk, upon Condition to pay the Kings Silver into the Exchequer within 14 days after he received it; the Defendant pleads *Stat. 23 H. 8.* and averred it was taken *colore Officii*; upon demurrer adjudged *pro quer.* for the Statute

Statute doth not intend such Obligation taken of them, which are not to appear, nor are in Custody, *Moor n. 685. Cartwright and Dalerworth.*

The Sheriffs Bond for appearance at a day certain, at which day the Party did not appear; but two days after he appeared: *Per Cur.* this appearance, though after the day, shall be allowed of for a good appearance, and shall be a discharge of the Bond; for the whole Term is but one day in Law; so it is in *C. B.* and *B. R.* 2 *Bulfr. p. 255. Daly and Fryar.*

Pleadings.

J. S. puts himself in a special Bailiff, and Arrests *J. D.* and takes Bond, &c. this is by Dures, and the Defendant might plead that; yet its not within the Statute, nor aided by it, for *J. D.* was never in the Sheriffs Custody after the Arrest, and the Bond was taken out of the County where he was arrested, and so by Dures, but not *deins Statute, Cro. Eliz. p. 746. Brown and Adams, 3 Keble 756, 760. Earl of Bristol and Lord Burks Case.*

On the Sheriffs Bond it must be averred, that there is a Record in the Rejoinder, as well as in the Bar, 2 *Keble 250, 278. Knight and Pitts Case.* If one plead appearance, he must conclude *probat per Record. Cro. Eliz. fol. 466. Corbets Case.*

Though the Defendant nor Bail have any thing in the County, nor are Inhabitants in the County, yet the Bond is good; for the Statute doth not

make

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make void any Bonds, but what are made in other manner, in oppression to the People, which the Statute appoints to be void; and the words *in other manner and form* are to be intended of the matter of the Bonds as to the Sheriff, and not for the sufficiency of the Sureties; therefore if he take Bond with one Surety it is good enough, *Crook M. 43 Eliz. pl. 9. Blackburn versus Michelborne.* The Sheriff is Judge of the sufficiency, and it is no Plea to say, he took Bond of insufficient persons, *More n. 818. Cotton and Wade.*

A Condition that *J. S.* appear in *B. R.* &c. The Defendant on *Oyer* demurred, because it is not taken by the Sheriff in the name of his Office. *Sed non allocatur*, the Statute being not pleaded, *2 Keb. 620. Jackes and Reyner.*

If the Sheriff take an Obligation for the appearance of *J. S.* before Process comes to him to arrest *J. S.* and after the Process comes, this Obligation is good, *Siderfin p. 151. Anonymus.*

A Statute of 200 *l.* was acknowledged to the Defendant to *J. S.* and this was extended by the Plaintiff being Sheriff, and that it was agreed by C. E. Brother to the Plaintiff and the Under-Sheriff, before the *Liberate* executed, that the Defendant should enter into the said Bond to the use of the Plaintiff: *Per Cur.* this Obligation is not within *Stat. 23 H. 6.* for the party was not in the Ward of the Sheriff; and so it was resolved in *Beufages's Case, Winch. 20, 50. Emson and Barburst.*

A Bond to Neel Sheriff of *Warwick*; and the Bond was to *Neel Vic. Com. præd. and Warwick* was put in the Margent; *per Dodderidge*, this is not a good Bond; he ought to be named Sheriff

and of what County, 2 *Rolls Rep. fol. 365. Neale and Cooper, vide* such a Case in 3 *Keble fol. 422. Brisco and Richardson. Q.* If it shall be taken by Presumption in this Case, the Writ being directed to the Sheriff of *Cumberland*, and the Bond by *R. and S. of Carlisle* in that County.

Bail Bond was to appear at *Westminster die Sab' proxim' post Purif.* to answer, its ill, 3 *Keble 260, Rod and Huans.*

The Condition was *Stare mandatis Ecclesie*, on Presentment for not receiving the Sacrament, whereon he was excommunicated, and gave this Bond for Absolution. *Q.* if this be a good Bond, for *per Cur. 9 Jac.* the Bishop can only take a Pledge in such Case, and not Bond. 3 *Keble p. 219. Bishop of Exeter and Star.*

A Condition to appear in *B. R.* where the Process is returnable, &c. the Defendant said *in facto*, that he had appeared *secundum formam*, &c. *Et hoc petit*, &c. there was a Repleader awarded, for it must be tried *per* the Record; *A.* is bound to appear such a day, &c. and *A.* at the said day goes to the Court, but there no Process is returned, then the Party may go to one of the chief Clerks of the Court, and pray him to take a Note of his appearance. *Vide* the Form of Entry in such Case; if the other Party pleaded *nul tiel Record*, it behoveth that the Defendant have the Record ready at his peril; for this Court of Common Pleas cannot write to the Justices of the Kings Bench to certifie a Record hither, 1 *Leon. p. 90. Bret and Shepard.*

Debt upon a Sheriffs Bond; *Jones* for the Bail prayed the Principal being now in Person, may

may be admitted to plead discharging the Amerciaments, (which is the course of the Court) where the Prosecution is fresh; but where the Defendant in the Original Action, *i. e.* the Principal is become insolvent, *per Cur.* the Bail Bond is the only remedy, and they will not discharge that on the ordinary Rules; but in this Case, because the Bail appeared on the very day of the return, and the default is the Plaintiffs own, and the Bond not above a year old, paying the Amerciaments and Costs the Bail was discharged, and the Principal admitted to plead, 2 Keble 545, 553. Flood and Williams.

If the Defendant appears not to the Sheriffs Bond according to the Condition thereof, the Plaintiff may by leave of the Sheriff sue the Bond in the Sheriffs Name; but its at the Plaintiffs Election to amerce the Sheriff, *Stiles Pract. Register* p. 221.

When Bail is put in *de bene esse* (as Bail taken in a Judges Chamber is) the Plaintiff cannot sue the Sheriffs Bond, till it be refused or set aside; but he ought to except against it in the Judges Chamber, 1 Keble 478. *Anonymus.*

The Court cannot compel a Sheriff to assign his Bond; the Party was arrested, and through his default in not returning his Writ, the Defendant died; *Per Cur.* in this Case he shall not take advantage of his own wrong, but shall now assign the Bail Bond, or pay the utmost Amerciaments, 2 Keble 388. *Hill and Browning.*

A Bail Bond was discharged upon motion, the Mory being paid before the return of the Writ; and appearance ordered, 3 Keble 316. *Randals Case.*

In *Det. sur Bond*, the Defendant pleads *Stat. 23 H. 6.* and shews that *V.* was in Execution, and the Bond made for his deliverance against the Statute. The Plaintiff replies, *tempore confectio- nis* of the said Bond, *V.* was at large, *absque hoc* that he was in Prison *tempore confectio- nis*, &c. The Traverse is not good; for one may be in pri- son and make a promise to make a Bond for which he is enlarged, and within an hour after he makes the Bond, the same is within the Statute, it ought to be *absque hoc* that it was made *pro deliberatione*, 2 Leon. 107. *Bowes* and *Vernon*. 2 Keb. 512. *Die* and *Adams*.

The Condition was if *Thomas Manningham* keep the Sheriff without damage against our Lord the King and one *Tb. P.* and at all times be at the Commandment of the said Sheriff as a true Prisoner, and appear before the Justices, &c. then the Obligation to be void. The Defendant plead- ed the Statute of 23 H. 6. and that the Body of *Tbo. Manningham* was in Execution upon a Re- cognisance, and that the Sheriff made the Obligation for the Delivery of the said *Thomas Man- ningham*, and demanded Judgment *si actio*, i. e. if the Plaintiff ought to maintain his Action; this is no good Conclusion of the Plea, he ought to have concluded *issint nient son fait*. For the Statute saith it shall be void, and if it shall be void, then it is void from the beginning, and then it is not his Deed. And farther, the Defendant had not wisely concluded his Plea, for this spe- cial Conclusion had straitned the Defendant so, that if the Obligation be void for any other cause the Defendant shall not have benefit of it; and yet because

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because it appeared to the Judges on the matter in Law, that the Plaintiff had no cause of Action, the Court gave Judgment against him, for the Obligation is void by the Letter of the Statute, for it makes void Obligations taken in other manner, which extends to avoid Obligations for bayling those which are contained in the 2d Branch, as those in Execution, &c. *Plowd. 66, 67. Dive and Manningham.* Yet the Condition was that the Defendant should appear in *B. R.* to answer in a Plea of Trespass and satisfy the Damages. The Defendant pleads the Statute of 23 *H. 6.* that the Bond was made for his enlargement and *issint* not his Deed. The Plaintiff demurs specially upon the Conclusion of the Plea, which ought to be Judgment *si actio*, and agreed the Plea to be naught, *Allen p. 58. Leech and Davies.*

Det sur Obligat. dated 25 *Sept.* The Defendant pleads a *Ca. sa.* was awarded against *B.* who was taken on it 30 *Sep.* and that the Obligation was made for the enlargement of *B.* The Plaintiff demurs, and had Judgment because it appears the Bond was made before the Arrest and so could not be avoided by 23 *H. 6.* but he ought to have pleaded that with a *primo deliberat.* after the Arrest, *Noy 23. Collins and Phillips.*

Det sur Bond by the Sheriff dated 13 *Junij*, the Defendant demanded Oyer of the Condition, which was that if he appear here *Veneris prox. post tres Trin.* and pleads *Veneris prox. post tres Trin.* was 14 *Junij*, and that he was imprisoned by the Plaintiff till 19 *Jun.* and that the Obligation *supra fuit primo deliberat. per le def. 19 Junij, absque hoc* that this was delivered as his Deed be-

fore the 19th of June. The Defendant demurs: *Per Cur.* this is not a good Traverse, it ought to have been, *absque hoc* that this was delivered as his Deed before *die Veneris prox. post tres Trin.* For if the Traverse *supra* be allowed, the Plaintiff shall be excluded from answering to the time alledged of the Return, although it be false, *Siderfin p. 300. Courtney and Phelps, 2 Keb. p. 108, 109, 122. mesme Case.*

The Defendant pleads to the Sheriffs Bond, that that there was no Writ ever delivered to the Sheriff, and so would avoid it *per Stat. 23 H. 6.* The Sheriff after the Writ sent out, but before delivery, takes Security, which *per Cur.* he may if the Defendant will give it, *1 Keb. 554. Brumfield versus Penbay.*

The Defendant pleads *Stat. 23 H. 6.* and that he was in Custody by Warrant of a Writ returned *Veneris post Oct. Pur.* The Plaintiff replied, the Defendant was taken by a Warrant on a Writ returned *Sab. post Oct. Pur.* and not by any Writ returned *Veneris, &c.* The Defendant rejoined that he was in Custody by Vertue of a Writ returned *Veneris post Oct. Pur. absque hoc*, that he was taken by any Writ returned *Sab. post Oct.* The Plaintiff demurs: *Per Cur.* this is no Traverse upon a Traverse; and there would be no Traverse in the Replication, which would make an end, but in the Rejoinder it doth, *2 Keb. 105. 94. Bennet and Philkens, 1 Sanders p. 20. id. Case, 3 Keb. 656. Gold and Cutler, 791. Sturges Case.*

The Defendant pleads to a Sheriffs Bond taken for his appearance in *B. R. die Sab. prox. post Oct. Sancti Martini*, and that he appeared at the day, and

and the Court of Common Pleas gave him a day to bring the Record of his appearance by *Mittimus* out of the Chancery; the Record was certified (*viz.*) that he appeared *Lune prox. post 15 Martini*, which was after the day, and adjudged good; for if the appearance be the same Term, it is good, 1 *Brownl.* 58. *Statfield* and *Grony*, 1 *Brownl.* 74. *Carter* and *Freeman*.

To plead an appearance, and not to say *pront patet per Record.* is naught, 1 *Brownl.* 91. *Andrews* and *Robins*.

A Condition to save harmless a Serjeant at Mace for letting the Defendant go on a Protection of the Lord of *Bath*. The Defendant pleads the Statute of *H. 6.* and misrecites it. The Plaintiff replies he was Bail for the Defendant, and for saving harmless of that, it was given; the Plaintiff is estopp'd by the Bond to plead it was in another manner, 2 *Keb.* p. 278, 334.

The Defendant pleads the Statute, and that it was for Ease and Favour and not for a just Debt. The Plaintiff saith, it was for a just Debt, *absque hoc* that it was for Ease and Favour. Judgment *pro Quer.* for not joyning Issue, 2 *Keb.* 554.

Debt on a Bail Bond to appear. Defendant pleads before the day he was taken by *Cap. Utl.* and detained till after the day, and so could not appear. The Plaintiff demurred: *Per Cur.* it is an ill Plea; for the Party may remove himself by *Habeas Corpus*; and all Bail Bonds may be thus avoided, 2 *Keb.* 622. *Jeoffries* and *Cooper*. And the Plaintiff doth but his duty, *Siderfin* p. 406. *id.* Case.

A Bond to be a true Prisoner for Fees, &c.

THE Marshal takes Bond of one in Execution to be a true Prisoner, who escapes; Action brought against him, it is a good Bond, *Latch. 143.* Sir G. Reynel versus *Elworthy*, *Popb. 165.* Sir G. Reynel's Case. The Marshalsey ruled to be enlarged, and this shall be called *within the Rules*; and if the Marshal take a Bond to tarry there it is good, *ibid.*

A Bond to the Marshal to save harmless from Escapes is void and within the Statute, because not a Bond that he shall continue a true Prisoner, *Vid.* the Condition, Record and Pleadings, 1 *Sanders* 160, 161, 162. *Lenthale* and *Cook*, 2 *Keb.* 422, *Siderfin* 382. *mesme* Case.

The Defendant demands Oyer of the Condition, that the Defendant being a Prisoner and in the Custody of the Plaintiff, shall be a true Prisoner, and shall not make any Escape. The Defendant pleads *Stat. 23 H. 6.* and saith, that this Obligation was taken by the Plaintiff *colore officii sui*, and that it was for ease and favour to the Defendant. The Plaintiff replies, the said Obligation was taken for the better Security of the Defendant, *absque hoc* that it was for ease and favour; the Defendant demurs; Judgment *pro Quer.* For the intention of the Obligation was for ease and favour; but traversing this had taken this away; and when the Defendant had such Issue offered, and refused it, and demurs, the Defendant agreed it was not for ease and favour: a little Evidence in such case would serve to prove ease and favour, *Siderfin* 283.

Lenthale

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Lenthall and *Cook*. From *Queen Eliz.* time such Bonds have been usually taken, after Issue such Bond is good, 2 *Keb.* 423. To be a true Prisoner, and to pay Fees is void; for it is entire, 10 *Cook* 100. b.

A Bond to the Warden of the Fleet to be a true Prisoner. Defendant without pleading the Statute saith, it was for ease and favour. The Plaintiff demurs. This Bond is void at Common Law; this is a publick Law and need not to be pleaded. The Plaintiff should have traversed the Ease. Judgment *pro Def.* 3 *Keb.* 320, 361. *Oakes* and *Cell*.

The Warden of the Fleet takes a Condition for true Imprisonment of *M.* and to pay all Fees and Chamber Rent. The Defendant pleads the Statute that it was for Ease. The Plaintiff replies the Proviso, which excepteth the Warden and traverseth not the true Imprisonment, it is ill. The Obligation is void at Common Law, and the Defendant need not plead the Statute. The Warden or other Gaoler cannot impose what Rents they will on their Chambers, 3 *Keb.* 133, 603. *Duckenfield* and *Wood*.

Since 13 *Car.* 2. c. 2. persons arrested by Process out of the Kings Bench or Common Pleas, not expressing the Cause out of the Action in the Writ, Bill or Process, shall give Bail-Bond not exceeding the Sum of 40 *l.* and an appearance entred shall discharge a Bail-Bond; yet if the Sheriff take 150 *l.* Bond in such Case, it is a Misdemeanour, but the Bond is not void, 2 *Keb.* 287, 311. Yet he may bring an Action upon the Statute against the Sheriff, *ibid.* p. 311.

Out

Out of this Act 13 Car. 2. are excepted Arrests upon *Cap. Utleg.* Attachments on Rescous, Contempt, and of Priviledge; the said Act doth not extend to any popular Action, nor to any other Action brought upon any penal Law or Statute (except Debt for not setting out of Tithes) nor to any Indictment, Presentment, Inquisition, Information or Appeal.

Upon a Statute acknowledged and Extent sued, the Sheriff takes Bond of 20 *l.* for the payment of 10 *l.* for his Fee, and this was before the *Liberate*, adjudged the Bond was void; for the Statute of 28 H. 8. gives him an Action of Debt for his Fee, and he must not have a double Reward. 1. Because he took the Bond before the *Liberate*. 2. He took his wages before he had done his work, *Latch.* 10. *Epson's Case.* A Lease of a Bailywick *contra*, 23 H. 6. cap. 10. 3 *Keb. p.* 678. *Ellis and Nelson.*

A Condition repugnant or not.

IF the Condition be repugnant to the Obligation it self, there the Condition is void, and the Obligation is good: As if the Condition be, that the Obligee shall not sue for the Mony in the Obligation; The Condition is void and the Obligation is single; and yet this may be done by a Defeasance made after the Obligation, 7 H. 6. 44. 21 H. 7. 24, 30.

If the Condition be that if the Obligee shall pay to *J. S.* 10 *l.* at such a day, then the Obligation being 100 *l.* shall be void, otherwise not, although this was not the intent of the parties, yet the Condition is good; for if the Obligee do not pay

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pay the 10 *l.* the Obligation is forfeited, 36 *H. 6. 9. b.*

So if the Condition be, that if the Obligor do not pay to the Obligee at such a day 10 *l.* then the Obligation being 100 *l.* shall be void, this is a good Condition, and the Obligor may say in an Action on the Obligation, that he did not pay the 10 *l.* and so avoid the Obligation; for though the intent was not so, yet the words were so, and it ought to be adjudged upon the words, 39 *H. 6. 10. cited, 1 Rolls Abr. 419.*

A Condition, if the within bounden *J. B.* shall happen to dye without Issue of his Body, that then if the said *J. B.* by his last Will or otherwise in writing in his life time shall lawfully assure, &c. *Per Dodderige* this is repugnant and impossible; he ought to dye without Issue first and then make the Conveyance; but three Judges *contra.* The Condition being made for the Benefit of the Obligor shall have Construction according to the intendment of the Parties, and the intention was, that a Conveyance shall be made by the Obligor in his Life by Will or otherwise, so that they shall remain and be assured to, &c. *Jones Rep. p. 180. Eaton and Laughter.*

The Condition was, if the Defendant pay the Plaintiff 2*s.* per Week until the full Sum of 7 *l.* 10 *s.* be paid (*scilicet*) on every Saturday, and if he fail of payment at any one day, that then the Bond to be void. The Defendant pleads, he did not pay at such a day, the Plaintiff demurs: *Per Cur.* the Condition is repugnant and void, and the Obligation single, *Siderfin H. 14 & 15 Car. 2. pl. 14. Vernon and Alsop, Vid. Siderfin 456. Maleverer and Hawksby contra, 1 Keb. 356, 415, 451. Vernon's Case.*

A Condition impossible.

What shall be said a Condition impossible, and the Effect of it.

IF the Condition of an Obligation be, that the Obligor shall assign to the Obligee a Commission of Bankruptcy, this is an impossible Condition and therefore void, and the Obligation single, for it is impossible to assign the Commission, 1 *Rolls Abr.* p. 419. *Street and Daniel.*

If a Condition be *quod debet pluerre cras*, this is a good Condition, for he hath taken it upon him at his peril, and it is not impossible in it self, 22 *E.* 4. 26.

If a Condition be that the Obligor shall go from *St. Peter's Church in Westminster* to *St. Peter's Church in Rome* within three hours, this is impossible and void, *Co. Lit.* 206. b.

If the Condition be to save harmless the Obligee against a Stranger of an Obligation in which the Obligee stood bound to the Obligor, this is a good Condition; for although by no possibility the Stranger may have to do with this, yet if he will save harmless against him, it is within the Condition, for it may be he had some fear of damage by him, *Quære de hoc*, 1 *Rolls Abr.* p. 420.

Where the Condition is impossible the Bond is single, contrary where a man is charged by *Act in Law*, 2 *Leon.* 189. in *Wood's Case*.

If the Condition of an Obligation or Feoffment be impossible at the time of the making it, the Condition is void and the Obligation single, because

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cause the Condition is subsequent ; but if a Condition precedent be impossible at the time of the making, there all is void, because nothing passeth before the Condition performed, *Co. Lit.* 206.

1 *Rolls Abr.* 420.

Casualties that hinder performance shall not excuse, as Floods hindring appearance, or being imprisoned, *Lit. Rep.* 88, 97, 115. *Melvin's Case*, 41 *E.* 3. double pl. 77. 2 *E.* 4. 2.

The Effect of a Condition impossible, and how it shall excuse.

IF the Condition of a Bond or Recognisance, &c. be impossible at the time of the making the Condition, the Obligation, &c. is good and single, as a Condition to go to *Rome* in three hours, the Condition is void and the Obligation is good. So if I am bound in an Obligation with a Condition to stand to the award of *J. S.* provided that the Award be made before the 10th day of *May* next, and provided I have warning 15 days before the 10th day of *May*, and this Obligation is made the 9th day of *May*, this is a void Condition. So the Condition is that I will be nonsuited in such an Action, or assure such a piece of ground, when in truth there is no such Action or piece of ground, this Condition is void, and the Obligation remains single and good.

But in all Cases when the thing to be done by the Condition of a Bond or Recognizance, &c. is possible at the time of the making the Condition, and before the same can be performed the Condition becomes impossible by the Act of God, or of the

the Law, or of the Obligee, in this case the Obligation is saved; and the Obligation and Condition are both become void.

1. By the Act of God. If a Man be bound with a Condition that he shall appear the next Term in such a Court, and before the day the Obligor dieth, hereby the Obligation is saved, *Cra. Eliz. p. 277. Trop and Bedingsfield*. Pleaded before the said Feast *J.* dies, Judgment *si actio*, a good Plea, the Condition is discharged and the Obligation void, *15 H. 7. 2. 13*. If *J. H.* had been bound with him, then he must have done it, *Qu.* So the Act of God may discharge the performance of the Condition. If he that is let to Mainprife be dead before the day, his death excuseth the Mainpernors, *Water Plaintiff Perry and Spring Defendants, 1 Rols Abr. p. 449*. If *A.* recovers *de rurs B. en Bank*, and *B.* brought a Writ of Error, and found Mainpernors to prosecute with Effect, and after dies before the Return of the Writ, this Act of God shall excuse the Mainpernors, *1 Rols Abr. tit. Condition, p. 450. Middleton and Twine*. If a Man becomes Bail for another in an Action, and after the Plaintiff recovers against the principal, and the *Capias* against him is returned *non est inventus*, and this is filed, and after the principal dyes before any *Scire Fac.* sued out against the Bail, yet this shall not excuse the Bail; otherwise, if he had died before the *Capias* returned and filed, *1 Rols Abr. tit. Condition, p. 450. Timberly and Booth, and Calf and Davies, and Hobbes and Doncaster*.

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A Condition to pay yearly 40 l. during the Life of, &c. at the Feast of St. Michael and the Annunciation or within 30 days after every of the said Feasts; the Wife dyes within the 30 days, this shall discharge the payment due at the Feast before her death, *Crook Eliz. p. 380. Price and Williams.*

If a Condition consists of two parts in the disjunctive, in which the party had Election which of them to perform, and both are possible at the time of making the Condition, and the one becomes impossible after by the Act of God, the Obligee is not bound to perform the other part; for that otherwise his Election shall be taken away by the Act of God; and the Condition is for the advantage of the Obligor and shall be taken beneficially for him. One was bound, that if after Marriage he and his Wife sold the Lands of the Wife, if then he did in his Life time purchase to his said Wife and her Heirs Lands of such Value, or else do and shall leave to her as Executrix, or by Legacy, or other good Assurance, as much Money, &c. He married her and she dyed and he survived her, he is excused from the Bond, 5 Rep. 22. *Laughter's Case, Crook Eliz. 398. mesme Case.*

But if a Condition consist of two parts, whereof one was not possible at the making of the Condition to be performed, he ought to perform the other; as if the Condition be to enfeoff J. S. or his Heirs when he comes to such a place, he is bound to enfeoff J. S. when he comes, for that the other is not possible, for he may not have an Heir during his Life, and so he had not any Election, 21 E.3. 29. cited in *Laughter's Case.*

If the Condition of an Obligation be to enfeof two before such a day, and one dies before the day, yet he ought to enfeof the other, 1 *Rolls Abr. tit. Condition*, p. 451. *Horn and May. Vid. contra Expressment, Bendl. p. 8. n. 31. Dyer 347. pl. 10. 15 H. 7. 13. 5 Rep. 22, &c.*

If the Condition be to enfeof J. S. within a certain time, if J. S. dies before the time be past, the Obligation is discharged, 1 *Rolls Abr. 451.*

I am bound to enfeof the Obligee at such a day, and before the said day I dye, my Executors shall not be charged with it, for the Condition is become impossible by the Act of God, for the Land descended to the Heir, 2 *Leon. p. 155. Kingwel and Chapman.*

2. By the Act of the Law. If a Man be bound in a Recognisance for the appearance of another in a *Scire Fac.* he shall not avoid this Recognisance by saying, that he which ought to appear was imprisoned at the day, 1 *Rolls Abr. p. 452. 2 Leon. p. 189. Wood and Avery.*

If a Man be obliged to repair an House or build a Mill, he is excused, if the Obligee will not suffer him to do it; or if a Stranger by the Command of the Obligee disturb him, and will not suffer him, 1 *Rolls Abr. 453. 3. 4. 5.*

A Condition that the Son of the Obligor shall serve the Obligee seven years, if he tender the Son and the Obligee refuse, it is no Forfeiture, 22 *E. 4. 26. 2 E. 4. 2.* So if he take him, and after within the Term command him to go from him, *Vid. ibid. 1 Rolls Abr. 453.*

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If the thing to be performed by the Condition may not be performed without the presence of the Obligee, there his absence shall excuse the performance, 12 H. 4. 23. b. cited 1 *Rolls Abr.* 457. As if the Condition be to make a Feoffment to the Obligee. *Aliter*, if it be to enter into a Statute to the Obligee, for that may be performed in his absence.

A Condition to enfeoff the Obligee, though the Obligee disseise him of the Land, yet this shall not excuse the performance of the Condition, for he may re-enter and perform it; but if he keep it with force till after the day of performance, it shall excuse, 1 *Rolls Abr.* 453, 454. *Frances's Case*, 8 Rep. 92.

If the Obligor by his own Act hath made the Condition impossible, it is a Forfeiture, 4 H. 7. 3, 4. *Vid. Keilway p. 60. Abbot of Glassenbury's Case.*

Where a Refusal of one of the Obligors shall be a Refusal of both.

Two are bound in a Statute with Defeasance, that they two shall make such assurance as shall be devised, &c. If an Assurance be devised and tendered to one, and he refuse to seal this, the Condition is broken by both; for he need not make Request to both at one time, 1 *Rolls Abridge* 454. 13.

The Condition is to pay 20 l. to the, &c. or before such a day render the Body of a Stranger, &c. so as the Plaintiff may declare against him; the Defendant pleads, before the day the Stranger died, a good Plea, though the Obligor undertakes for a third person, which differs from *Laugb*

ter's Case. Payment or Tender are to be at the same time, therefore a discharge of one, a discharge of both. *Contra*, if the Acts were to be done at different days. The Condition was to run a race, or pay by a day, and adjudged that the Defendant was discharged by the death of the Horse, 3 *Keb.* 738, 761, 770. *Warner and White.*

If one is bound to pay 20 *l.* before the 1st day of *May*, or to marry *A. S.* before the 1st of *Aug.* if he do not pay the 20 *l.* before the 1st of *May*, and *A. S.* dies before *August*, so that it is become impossible; yet the Obligation is forfeited. *Quere*, He hath undertaken to do one, and it was in his power, *Crook Eliz.* p. 864. *More's Case.*

3. By the Act of the Obligee. If *A.* be bound to *B.* that *J. S.* shall marry *Jane G.* by such a day, and before the day *B.* himself marry with *Jane G.* hereby the Obligation is discharged, and *B.* shall never take advantage of it, *Col. Lit.* 206. *a. b.*

If the Obligee be party to an Act that hinders the performance of the Condition, it shall excuse, 4 *H.* 7. 4. *b.*

One is bound to stand to the award of, &c. he may countermand the Arbitrators; but then he forfeits his Bond, because the Obligor by his own Act hath made the Condition of the Obligation (which was endorsed for the benefit of the Obligor to save him from the penalty of the Obligation) impossible to be performed, and by consequence his Obligation is become single, and without the benefit or help of any Condition, because
he

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he hath disabled himself to perform the Condition. If one be bound in an Obligation with a Condition that the Obligor shall give leave to the Obligee for the time of seven years to carry Wood, &c. though he give him leave, yet if he countermand it or discharge the Obligee, the Obligation is forfeited, 8 Rep. 82. *b. Viniors Case.*

Refusal at the day shall save the penalty, 1 *Rolls Abridg.* 448. *Vid. Tender and Refusal. Shep. Touchston p. 393.*

One is obliged to another to the use of a third person to deliver a Chest to the said third person, who refused to receive it upon the tender at day, the Obligation is saved, it being to the use of the third person, and he shall not take advantage of his own act, *Carne and Savery cited in Huish and Phillip's Case, Crook Eliz. 754.*

A Bond is delivered to *J. S.* to my use, and when it is tendered to me I refuse, hereby it is become void and cannot afterwards be made good; so if an Obligation be made to my Wife and I disagree to it, 5 Rep. 119. *Whelpdale's Case, Anders. 1 Rep. p. 4.*

A Bond forfeited by the default of the Obligor, as a Surrender of a Term, *Vid. Poph. p. 39. Fortb and Holborough, Crook Eliz. 313. mesme Case.* The Condition was, whereas Dr. Drury had let Land to the Defendant for 17 years, if the Defendant or his Executors paid to D. G. (a Stranger) 10 *l.* yearly during the said 17 years, if he or his Assigns shall and may so long occupy the Lands. The Defendant pleads, that he within five years surrendered the Lands to Dr. Drury. Action lies; for tho he surrendered, yet as to a Stranger, his Estate is not determined.

Condition insensible and uncertain.

THE Condition was (upon Oyer) That whereas the above bounden, &c. shall and will, &c. where the same should have been, if the above bounden, &c. shall and will, &c. this *per Cur.* is a void Condition, the same being insensible and not compulsory, as it ought, and so the Obligation is single, 2 *Bulstr.* 133. *Marker and Cross.*

If an Obligation be made by *A.* to *B.* with a Condition, that *A.* shall keep *B.* without damage against *J. S.* for 10 *l.* in which the Obligee is bound to the Obligor, this Condition is void and the Obligation single. So if *A.* be bound to *B.* with a Condition to save him harmless, and doth not say for what, or against whom, 39 *H.* 6. 10. 1 *Sanders* p. 65. *Butler and Wig.*

The Condition of, &c. is such, That if, &c. then the Condition of this Obligation shall be void; the last words are insensible and void, and the Condition is good, though these words *then this Obligation shall be void* had been left out, 2 *Sanders* 78. *Maleverer and Hawksby.*

Condition Copulative.

A Condition, that if the Plaintiff enjoyed such Land till the full age of *J. S.* and if *J. S.* within a month after his full age made assurance to the Plaintiff of the same Land, that then, &c. The Defendant pleads *J. S.* is not yet of full age, and because he did not answer whether he had enjoyed it in the mean time, and the Condition is
in

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in the copulative ; it was adjudged *pro Querente*, *Crook Eliz. p.870. Waller and Croot.*

If the Condition be in the copulative, and it is not possible to be so performed, it shall be taken in the disjunctive ; as if he and his Executors shall do such a thing, this is in the disjunctive, because he may not have an Executor in his Life ; so if he and his Assigns shall sell certain Lands, 1 *Rols Abridg.* 444.

A Condition to make Assurance of Land to an Obligee and his Heirs, and after the Obligee dies, it must be made to his Heirs, the Copulative shall be intended a Disjunctive, 1 *Rols Abr.* 450, 451. *Horn and May.*

Condition Disjunctive.

IF a Man be bound to perform all the Covenants in an Indenture, if all are in the affirmative, he may plead generally performance of all ; but if any be in the negative, he ought to plead to them specially, and to the rest generally. So if any of them are in the Disjunctive he may shew which of them he had performed, and if any are to be done on Record, he ought to shew this especially, *Doct. pl. 58. Co. Lit. 303. b.*

The Condition was, if he paid the Rent reserved at the Feasts mentioned in the Lease, or within ten days, or within six months (according to a later agreement) that then, &c. The Defendant pleads the Indenture *verbatim*, and that he hath performed all the Covenants, Payments and Agreements contained in the Indenture *secundum formam & effectum Indenturae & Condisi-*

nis præd. it is ill; for he cannot plead payment generally, for he hath Election to pay it at which of those days he will, *Crook Car.* 421. *Horn and Barber.*

If the Condition be in the disjunctive he need not to answer but to one generally, and that is true where the Condition goes in defeasance of the Obligation. *Aliter*, where the Condition not being performed makes the Obligation good, there the Disjunctive ought to be performed on both parts, *per Brian*, 4 H. 7. 12, &c.

Upon intention of Marriage. If *Abigail* survive *J. S.* and if she do not receive within two years after the death of *J. S.* 200 l. either by his last Will or by the Custom of *London*, that then the Obligor shall pay to the said *Abigail* within one year after the said two years 100 l. *Abigail* survived *J. S.* and she died *deins* two years after his death; *per Cur. pro Def.* For *Abigail* dying within the said two years, it became impossible, that this part should be performed, by the Act of God, and therefore the Obligor is not bound to perform the other part, *Jones* 171. *Wood and Bates*, *Palm. Rep.* 513. *mesme Case*, 9 El. *Dyer Elin and Laughter*, 1 *Rolls Abr.* 451. *Wood's Case. Contra, ideo vide.*

The Condition, when the Obligor should come to his Aunt he would enfeoff the Obligee or the Heirs of his Body, and the Obligee, when the Obligor came to his Aunt, requested him to enfeoff him, which the Obligor refused to do, the Obligation is forfeited: For though the Condition was in the Disjunctive, and the Condition is always for the benefit of the Obligor, yet because he was
alive

alive when the Obligor came to his Aunt, and it was not possible to enfeof his Heir, therefore he ought to perform such part of the disjunctive that then was possible, 21 Ed. 3. 29. b. cited 5 Rep. 112. *Mallorys Case*.

A Condition if the Obligor pay so much Money, then the Obligation to be void, or otherwise it shall be lawful for the Obligee to enjoy such Lands. The Defendant pleads enjoyment, the Plaintiff demurs, adjudged *pro Quer.* the words concerning the Land being idle, *Siderfin* p. 312. 2 *Kemble* 131. *Ferrers* and *Newton* 117.

Condition disjunctive.

Election of { Obligor,
 { Obligee,

Condition if he paid to *A.* or his Heirs annually 12 *l.* at *Michaelmas* and *Christmas*, or paid to him or his Heirs at any of the said Feasts 150 *l.* then, &c. and demurs, because the Obligor hath any time to pay one or other, and that there is not any breach as long as he liveth; so Action is brought before breach; *sed per Cur.* though the Obligor hath Election, yet he ought to pay the 12 *l.* yearly till he pay the 150 *l.* and because he hath not alledged payment of the one or the other, the Bond is forfeited, *Cro. Jac.* 594. *Abbot* and *Rookwood*, and he hath lost his Election, 2 *Rolls Rep.* 215. *mesure Case*.

Condition if Obligor before *M.* make a Lease to the Obligee for 31 *ans.* if *A.* will assent, and if

he will not, then for 21 years, &c. *A.* will not assent; the Lease for 21 years ought to be made before *M. Dyer* 18 *Eliz.* 347. 1 *Rolls Abr.* 446.

Condition to enfeoff the Obligee of *D.* or *S.* Obligee hath Election, 18 *Ed.* 4. 17. *b.* So if it had been upon request, or to pay 20 *l.* or a Pint of Wine upon request, *ibid.* 18 *Ed.* 4. 20, 21. So if it be to go to *York*, or marry my Daughter upon request; for in all these Cases the request had no other effect but to appoint a time when the Obligor should do the one or the other, *ibid.*

If I am bound to pay 5 *l.* at the Feast of *P.* next, or before, &c. at the request of the Obligee; the Obligor hath given his consent that the Obligee shall have the Election in this Case, *Dyer* 1, 2. *M.* 108. 32. *Aliter* if it had been to pay 5 *l.* before the Feast of *P.* at the request of the Obligee, or at the Feast of *P.* there the Obligor had the Election, *ibid.*

Condition if the Obligor deliver certain Obligations to the Obligee before such a day to be cancelled, or else if he seal a Deed of Release of all Actions which the Obligee shall cause to be made by the advice of his Council, and shall deliver it to the Obligee to be sealed before the day aforesaid, &c. both are in the Election of the Obligor, for if the Obligee doth not deliver him any Release to be sealed by him, he is not bound to deliver the Bonds, *id. Case*, *Cro. El.* p. 396, 539. 1 *Rolls Abr.* 447. *Greningham* and *Ewer*, *Moor* n. 492. And if he had delivered him a Release, then

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then he ought to have Election to deliver the Bonds, or to seal the Release, *ibid.*

Condition is to deliver such Obligation before such a day, or to pay to him 10 *l.* if he request this, if he doth not request the 10 *l.* the Obligor ought to deliver the Obligation, for he had not Election until request made; but after request made he had Election which of them he would do, *id. ibid.*

Condition was that *H.* should make a Conveyance when he came to twenty one years of Age, or in default thereof the Defendant should pay 50 *l.* the Defendant hath not Election; if he do not the one, he must do the other, 1 *Keble* 230. *Johnson* and *Bridges.*

Condition to deliver to the Plaintiff before such a Feast, such a Ship and Tackle, or in default thereof to pay at the same Feast such a Sum as *J. S.* shall value them to be worth; the Defendant pleads before such a Feast *J. S.* did not value them; upon Demurrer, *pro Quer.* for though the Obligor hath Election to do the one or the other, yet the Condition being for his benefit, he ought to provide the value should be assessed, otherwise he is to deliver the Goods themselves; so if one be obliged to make such an Assurance of such Land as the Council of the Obligee before such a day shall oblige, or to pay there, and then 100 *l.* If the Council devise not any assurance, he ought to pay the 100 *l.* *Cro. M.* 43 *Eliz.* pl. 42. *More* and *Morecomb.*

Condition that the Obligor should pay to the Obligee, &c. at the choice and election of the Obligee within a month after the death of *J. S.*
301.

30 *l.* or twenty Kine; the Defendant pleads that the Plaintiff within the month after the death, &c. did not make any choice or election: *Per Cur.* its a good Plea, for the Obligor is not bound to make a tender of both; and the Election of the Plaintiff ought to precede the Tender of the Defendant, 1 *Leon. p. 69, 70. Basset and Kerns Case.*

The Defendant was bound to the Lord *Lisle* to shew his Evidences touching such an House, to the said Lord or his Council; the Election was to the Defendant to whom he would shew them, 18 *Ed. 4. 15, 17, 20, 21.*

Where the Condition is in the Disjunctive, before the day of performance, the Election is to the Obligor; but if at the day he make default, the Election is to the Obligee, 9 *Ed. 4. 36, 37.*

If I am bound to you in a Bond, &c. to pay to you such a day 10 *l.* in Gold or Silver, if you do not make your Election before the day, yet the Duty remains payable; for the thing to be paid is parcel of the Penalty, *per Concessum Curia*, in 1 *Leon. p. 70.*

Condition, if the above bounden *J. B. &c.* shall within six months after the death of, &c. assure unto the said *H. B.* as the Council of the said *H. B.* shall advise, one Annuity of, &c. during *H. B.*'s Life, payable after *M.*'s decease, if the said *H. B.* require the same at the Dwelling-house, &c. or if he shall not grant the same, if then the said *J. B.* shall pay unto *H. B.* within the time aforementioned 300 *l.* then, &c. The Defendant pleads the Plaintiff *H. B.* had not tendred any grant of an Annuity within the time of six months after

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after the death of his Mother: *Per Cur.* the Obligors Election is taken away by the Act of the Obligee himself, and the Plaintiff by his negligence hath deprived the Defendant of his Election; Judgment *pro Defendente*, *Mod. Rep.* 264. *Basset and Basset.*

Condition to pay 20 l. after demand, when L. had a Son that shall or can speak the Lords Prayer in English: The Defendant pleads L. had not a Son after the Obligation made *qui locutus fuit aut loqui potuit* the Lords Prayer; the Plaintiff replied he had a Son *qui loqui potuit*, &c. its a good Replication, and a good Issue, for the Condition being in the Disjunctive, he may alledge the one or the other at Election; and the power of speaking shall be proved by those that have heard him recite it, *Cro. El.* p. 727. *Lane and Goleman.*

Obligation and Condition void by Durels, Minas.

Durels is not intended but where the Party was wrongfully imprisoned till he make the Bond, 3 *Leon.* 239. *Knight and Norton.*

Durels pleaded, the Case on the Evidence was, Plaintiff charged the Defendant with Felony, for stealing an Horse, and procured a Warrant from a Justice of Peace, whereby he was taken, and being in Custody, upon promise of the Plaintiff to discharge him, sealed the Bond, and thereupon was immediately discharged; and it appeared that the Horse was the Defendants own Horse; and *Roll* directed the Jury that the Bond was gotten by Durels, these Proceedings being but to cover the deceit, *Allen* p. 92.

The

The Defendant pleads duress of Imprisonment ; its no good Replication for the Plaintiff to say, that menac't to bring a Suit against him for Arrears of Rent according to Law, and by Process of Law to imprison him if he can, unless he would seal the Obligation, for this is not any answer to the Bar, 16 *Ed. 4. 7. b.*

Its no Plea that it was done by duress, by a Stranger, without making the Obligee Party to the duress, *Keil. 154. a.*

If the Defendant pleads the Obligation was made by duress of Imprisonment, and by Menace of Imprisonment, its double, 1 *Com. 140. a. 19 Ed. 4. 4.* declares that the Obligation was made to *B.* its a good Plea for the Defendant to say that the Obligation was made to *S.* by duress, without any Traverse, for this is but matter of supposal, 22 *Ed. 4. 40.* by *Jenny.*

The Defendant pleads that *Roberts* was imprisoned, and this Bond was given by him and the Defendant for enlargement ; the Plaintiff demurred, Judgment *pro Quer.* this *Roberts* being no Father, Husband, Wife or near Relation, in which Cases the Bond would be void, 3 *Keble 238. Warn and Sandowne, Duress. Br. 9.*

The Husband may avoid the Deed that he hath sealed by the duress of Imprisonment of his Wife or Son, but not of his Servant ; so Mayor and Commonalty may avoid a Deed sealed by duress of imprisonment of the Mayor, 2 *Brownl. 276.*

In Issue *per Minas* the Jury find it was *per metum imprisonament*. *Per Cur.* the duress ought to be pleaded specially, but the Verdict being, that the Plaintiff threatned *quod imprisonaret defendant.*

& *crimen feloniam ei imponeret nisi*, &c. its ill, being no more than by Law he may charge him with, 1 Keble p. 516. Picard and Lawrence.

The Defendant after Issue *de durefs* at the Assise, *relicta verificatione quod ipse non potest decere actionem*, &c. *vide* the Form of the Entry, and the Error was *decere* for *dedicere*, and revert, Cro. Jac. 343. *Anonymus*.

Debt by H. I. Executor of S. the Defendant pleads *per minas*, and after Issue joined before the *Nisi prius* confesseth the Action; the Confession is in the *debut* only, whereas it ought to be in the *detinet*; *Per Cur.* after the Defendant hath relinquished the Bar, the Declaration remains without defence, and so *pro Quer.* Moor n. 921. Joyner, and Ognel.

The Defendant pleads *durefs*; The Plaintiff saith to this he shall not be received, for that at such a day after the date of the Obligation, the Obligation was enrolled in Chancery, *Cur. pro Quer.* in such case he may not deny his Deed, 16 H. 7. 5.

Debt upon Bond in Inferior Court, *durefs* was pleaded, and no place certain alledged; this may be ill upon a special Demurrer, but is well after a Verdict, there being a place where the Obligation was made *infra jurisdictionem*, and the Party cannot plead *durefs* unless where the Bond was actually sealed, 2 Keble 630. Cubit and Green.

The Defendant pleads he made it *per minas de vita*, &c. the Plaintiff said he did it *spontanea voluntate*, and traversed the *minas*. The Plaintiff *cognovit Actionem*, and *vide* the Entry, Cro. El. p. 840. Brown and Holland.

Exposition of Conditions

About } payment of Mony,
 } doing other Acts.

About payment of Mony.

{ Persons to whom to be paid, or performance
 of other things.
 By whom to be paid or performed.
 Time of payment or performance.
 Place of payment or performance.

*Persons to whom payment is to be made, or who
 are assigns for performance.*

THE Condition is to pay 10 l. to such a Person as the Obligee shall name by his last Will, and after the Obligee names none by his Will, the Obligor is not bound to pay this to the Executor, for the Condition hath reference to his nomination, 1 *Rolls Abr.* p. 421. *Tit. Condition, Pease and Mead, Moor n. 1106. Hob. p. 9. vide Hob. 1 Brownl. 77. contra.*

The Condition of the Obligation is to leave certain Lands for three Lives to the Obligee or his Assigns, and after the Obligee demands a Lease to be made to three Strangers for their Lives, he ought to do this, otherwise the Condition is broken, for by the word (Assigns) here is intended Assigns by nomination, for he may not have other Assigns, for the Estate is not assignable before

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fore he hath it, 1 *Rolls Abr.* p. 421. *Allen and Wedgwood.*

If I am bound to pay Monies to two actually, I can pay this but to one, for that I cannot pay one and the same Sum to two several Persons at the same time, *per Glyn*, 2 *Siderfin* p. 41. *Abbots Case.*

A Condition to pay to B. and his Assigns 100 l. the Declaration was, that he had not paid this to B. to which exception was taken, for that he might have paid this to his Assigns, and adjudged a good exception, 2 *Siderfin* p. 41.

Payment to a Scrivener is sufficient, especially if he have the Bond in his Custody, 3 *Keble* 471. *Jacob and Searles. Q. in 2 Keble* 249. *Hicks and Loging.*

A Condition to pay Money to the Obligee, and the Parishioners of D. at such a day; payment to the Obligee, and two of the Parishioners, is good, *Moor n.* 175.

A Condition is to pay 10 l. its a good performance if he pay this to his Deputy, 42 *Ed.* 3. 13. b.

If Judgment be given in Debt, and the Money is paid to the Attorney of the Plaintiff, though the Attorney miscarry with the Money, yet the payment is good; but if a Scrivener is employed generally to put Money to use for a year, and the Monies are paid to the Scrivener, who breaks, this payment shall not excuse the Party; but if he receive this by special command, its a good cause of Equity, *Lit. p.* 54. *Cro. El.* 313. *Dr. Ford versus Hollingbrough*, *Lit. Rep.* 156. *Manningtons Case*, *Lit. Rep.* 173. *Parsons and Ewar.*

What

What Persons are to pay or do a thing by the Condition.

IF it be not set down in the Condition who shall do a thing, if the Obligee hath more skill he shall do, or else the Obligor if he have more skill shall do it. A Tailor is bound to me, that if I bring him three yards of Cloth which shall be measured and shaped, and if he make me a Cloak of it, and it is not said by whom it shall be shaped, it must be done by the Tailor, *Perk. sect. 785.*

A Condition of a Bond to pay Money; if my Servant by my command tender this to the Obligee, this is sufficient, *2 H. 6. 3. b.*

Vide infra Exposition of Conditions.

Of payment of Money on a Bond in general.

THE Defendant owed the Plaintiff Money upon Bond, and also Money for Wares sold; at the day of payment of the Bond he tendered the Money according to the Bond; the Plaintiff accepted it, and said it should be for the Debt due upon the Contract, and so crost his Book; but in Debt upon the Bond it was adjudged against the Plaintiff, for payment must be *secundum mentem dantis, non accipientis*, *Cro. Mich. 29* and *30 Eliz. B. R. Anonymus. Stiles p. 239. Boyes and Cranckfield.*

Debt is due by Bond, and another Debt is due by the same Debtor to the same Debtee of equal Sum, and the Debtor pay one Sum generally; this shall

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shall be intended payment upon the Obligation,
2 Brownl. 107, 108.

A Condition to pay yearly such Interest Money as 20 l. shall amount to after the rate of 10 l. per cent. when it is *secundum ratam* of 10 l. per cent; the Court knows well that is 40 s. per ann. Cro. Jac. p. 378. *Williamson and Hunt.*

Payment of a lesser Sum before the day, 2 Keb. 628. *Chapman and Wyn. vide plus de hoc infra Tit. Pleading.*

In what Cases a collateral thing may be given in satisfaction of a Condition, for payment of some other thing in lieu of Money.

A Cceptance of another Bond no good Plea, so of a Statute, Cro. Car. 85. *vide 3 Bulst. 148. 1 Rolls Rep. 266. Foerwood and Dickens.*

The Defendant pleads he paid an Horse in name of the 20 s. or sold Land to the Plaintiff for it is its a good performance, 11 H. 7. 21.

If a Man be bound in 20 l. to do a collateral Act, as to make a Feoffment, to be bound in a Statute to render a true account, there Money or any other thing given in satisfaction, is not any performance of the Condition, 9 Rep. *Peyto's Case*, 1 Rolls Abr. 455.

But where the Condition is to pay Money, there any other collateral thing will be satisfaction, *id. ibid.*

A Man bound in 200 Quarters of Corn on condition to pay 20 l. a Ring or Horse, or other thing collateral is satisfaction, 9 Rep. 79. *Peyto's Case*

But if the Condition were to pay 5 Quarters Mony or other collateral thing is not satisfaction, because of the original Contract, *ib. ibid.*

If the Condition be to pay a lesser Sum at the day, if the Obligee agree he shall pay an Horse or other thing in satisfaction, yet if he refuse this at the day, the Obligor ought to pay that lesser Sum at the day, 1 *Rolls Abr.* 456. *vide plus ibid.*

A Condition was to pay, &c. on the Birth day of the first Child of the Obligee; the Defendant pleads after the Bond entred into, and before the Birth of the Child, the Plaintiff accepted of the Defendant one Load of Lime in full satisfaction of the said Debt, and in full discharge *dicti scripti Obligatorii*, its no good Plea, but he might well have pleaded this Acceptance in full satisfaction of the Sum of Mony contained in the Condition of the Bond, 1 *Bulst.* 66. *Cro. Jac.* 254. *Yelv. p.* 192. 1 *Brownl. Rep.* 109. *Neal and Sheffield.*

If a Condition be to build an House of so much in length, &c. he may not plead another Agreement in other manner in satisfaction of this, unless it be by Deed.

Entring a new Obligation with Surety is no discharge of the first, for its but a thing in action, and not present satisfaction, 1 *Rolls Abr.* 470. *Hawes and Burch, Lovelace and Andrews*, so entering into Obligation is no satisfaction of a Statute, *ibid.* 12 *H. 4.* 23. *b.*

A Condition to pay 25 *l.* at *Michaelmas*, and the Obligor lets Land to B. the Obligee rendring 35 *l.* Rent at the said Feast, and after, and before the day of payment *concordat. & agreeat. est,*
that

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that the Obligee shall retain 25 *l.* of the said Rent in satisfaction of the Bond; and for the residue he shall answer the Obligor; and the Obligor because of the said Agreement doth not pay the 25 *l.* at the day, the Obligation is forfeited; this Agreement can be no discharge, for the Rent at the time of the Agreement was not due, 1 *Rolls Abr.* 470. *Harrington and Andrews.*

A Condition to pay 10 *l.* at a day which is not paid, but after the day the Obligee accepts of a Statute-Staple in full satisfaction of the Obligation, yet the Bond is in force, and the Obligee had Election to sue which he will, 1 *Rolls Abr.* 470. *Batbautes Case*, 6 *Co.* 44. *b.* *Higgins Case.*

A Condition to pay 100 Marks at a day, and at the day the Obligor and Obligee account together at another place, and for that the Obligee owes to the Obligor 20 *l.* by other Contract, the Obligee allows the 20 *l.* in the payment of the 100 Marks; this is a good satisfaction of the Condition, its payment by way of retainer, 1 *Rolls Abr.* p. 471, 475.

The Obligor and Obligee before the day of payment agree that the Obligor shall do several things, and amongst others, to assign his Interest in the Farm of the Customs of French Wines, and he pleads he hath done all in particular, and shews how, and it appearing to the Court that he may not by Law assign his Interest in the said Customs, though the Obligee had enjoyed them, yet this is not a good discharge of the Obligation, in as much as this is like to an Accord, so that all ought to be performed, otherwise its not good, for that the Obligee had not any remedy for this

that is not performed, 1 *Rolls Abr.* 471. *Simons and Mowlstone.*

A Condition to pay 20 *l.* at day, and a Stranger surrenders a Copy-hold to the use of the Obligee in satisfaction of the 20 *l.* which the Obligee accepts; this is a good satisfaction, and discharge of the Obligation, 1 *Rolls* 471. *Grymes and Blofield, vid. cont. Cro. El.* 541.

A Condition to appear before the Plaintiff at D. such a day; the Defendant saith he appeared before the Plaintiff at S. before the day, which he accepted of: *Cur. pro Quer.* because the Condition was to do a collateral thing, and the acceptance of another thing cannot dispense therewith, *Cro. Eliz.* p. 474. p. 38 *Eliz.* *Nortons Case.*

The Defendant pleads *J. S.* surrendred a Copyhold Tenement to the use of the Plaintiff in satisfaction of the 20 *l.* which the Plaintiff accepted; no Plea, for *J. S.* is a meer Stranger to the Condition, and satisfaction by him not good, *Cro. El.* p. 541. *Grimes and Blofield.*

Time of payment, or performance, where time is limited.

IF I pay Mony due upon Bond before the day, I am discharged, for its a Duty presently, 9 *H.* 7. 21. *a.*

The Defendant pleads payment at the day and place according to the Condition, upon which they were at Issue; the Jury find he paid it before the day, and at another place, and the Plaintiff accepted it; Verdict was found for the Defendant, for payment before the day, is payment at

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at the day, *Cro. Trin.* 31 *El.* *Bond* vers. *Richardson*. 1 *Leon.* p. 311. *id.* *Case.* 1 *Anderson* pl. 233.

The Condition was to pay 100 *l.* on the 31st day of *Septemb.* the Defendant pleads payment at the day, upon which Issue, and found for the Plaintiff, the payment being impossible, it shall be paid presently; this Issue is aided after Verdict by the Statute 13 *Eliz.* *Latch.* p. 158. *Gibbon* and *Purchase*, *Cro. Car.* 78. *Jones* 140.

Debt for 300 *l.* the Defendant pleads he paid the Mony such a day, whereas in truth the Case was, there were two days of payment limited in the Obligation, and the Defendant had paid part of the Mony on one day, and the rest on the other, and not all on one day; the Plaintiff replies, He did not pay the Mony at the day, &c. Issue and Verdict *pro Quer.* and in Arrest of Judgment *per Rolls*, If you have two days of payment to plead, and you relie upon one day in your pleading, and Issue is joined upon that, and it be found against you, you must be barred, *Stiles* p. 93. *Anonymus*.

If an Obligation be made the 17th day of *November*, *Anno* 12 *Jac.* And the Condition is to pay 5 *l.* the 21st day of *November* ensuing, and 5 *l.* the 20th day of *December* next after; the first 5 *l.* ought to be paid the 21 *Nov.* 12 *Jac.* for it refers to the day and not to the month, 1 *Rolls Abr.* 442. *Price* and *Coa.*

If a Condition be to pay 10 *s.* when *A.* comes to his House, and 10 *s.* at the Feast of *St. Michael*, and then at the Feast of *St. Andrew* then next ensuing 10 *s.* these last Sums ought to be

paid at the said next Feasts or Time, and not at the next Feasts after *A.* comes to his House, *ibid.*

If a Condition be to pay so much *citra* such a Feast, it ought to be paid on the Eve of the said Feast, and not on the Feast day; the same Law is, If it be paid *infra Festum*, or *ante Festum*, but if it be to be paid *in Festo*, it must be on the Feast day, 1 *Rolls Abr. Tit. Condition*, p. 442.

Condition of an Obligation upon an Adventure to *New-found Land*, to pay so much Money within 40 days next after the Ship shall make her first return and arrival this Voyage from *New-found Land* into the Port of *Dartmouth*, or into any Harbor, Creek or Part of *England* where she shall first unlade her Goods, and after the Ship doth return to *Plimouth*, where she unlades her Goods, the Obligor is to pay the Monies within 40 days after the arrival of the Ship, and shall not have 40 days after the unloading of the Goods; for this is not for Freight, but for an Adventure; and the unloading of the Goods is only mentioned to describe the Haven where the Arrival shall be, and not to put a limitation of payment of the Monies to have 40 days after the discharge; but perhaps it might be some doubt, if the unloading was not within 40 days; the Plaintiff saith, He paid not the Money within 40 days after the Arrival of the Ship, and avers that the Ship was unladen of the Goods, but no time alledged of the unloading; and *per Cur.* if it were not unladen with 40 days, it ought to come on the other

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other part to shew this, 1 *Rolls Abr. Tit. Condition*, 442. *Leet and Gbolwick, Stiles* p. 30. *id. Case*.

The Condition was to pay at or before the 29th of September next, at such a place; if the Obligor tender the Money the 28th of September at the place, and the Oblige is not there, its a void Tender, for the Tender is to be the last day; but if the Obligor meet the Oblige at the place before the day, and then he tenders it, this is sufficient, and Oblige ought to receive it, *Cro. El.* p. 14. *Hawly and Simpson*.

A Bill Obligatory to render and pay 1188 Florens, which then amounted to 33 *l.* 12 *s.* to be paid *ad solutionem Festi Purification* called *Candlemas* day next ensuing; the Plaintiff in his Declaration avers, that *prædictæ solutiones dicti Festi Purification* next after the making of the Bill were according to the use of Merchants; the 20th day of February; the Defendant pleads *non est factum*, and found against him; in Arrest, resolved, that payment among Merchants is known to be on the 20th of February, and the Judges ought to take notice of it, and the rather, because the Defendant by his Plea, confesseth the Declaration to be true in that Averment, 1 *Brownl. Rep.* 102. *Pearson and Pentes*.

The Condition is to pay *Anno Dom.* 1599. in and upon the 13th of Octob. next after the date hereof at *D.* where the 13th of Octob. next after the date is long time before 1599. yet this shall be paid in 1599. and not before, for that is first expressed, 1 *Rolls Abr.* 444. *Crook Eliz.* p. 429. *Hankinson and Kile*.

The Condition, if he paid 15 *l.* at the Feast of *St. Michael* next following, and on the Feast of the *Annunciation* 15 *l.* and so yearly upon the said Feasts until *H* was advanced to a Benefice, that then, &c. The Defendant pleads he was presented to a Benefice before the first Feast of *St. Michael*, it is no Plea; for the Advancement dischargeth not the two first Summons due at the said Feasts: The limitation (*until he be advanced*) goes only to the other subsequent Payments, *Crook Eliz. p. 549. 2 Anders. 65. Countess of Warwick* versus the Bishop of *Coventry*.

A Condition to deliver 20 Quarters of Corn on the 29th day of *February* next following, and that Month had but 28 days; *per Cur.* he is not bound to deliver the Corn till such a year comes when *February* hath 29 days, and that is Leap-year, 1 *Leon. 101. Anonymus.*

A Condition to pay 20 *l.* at the Feast of our *Lady*, without limiting in certain what *Lady-day*, whether *Conception*, *Nativity* or *Annunciation*; *per Cur.* it shall be intended such a *Lady-day* which should next happen and follow the date of the Bond, 3 *Leon. p. 7. Anonymus. Quere.*

An Obligation dated 15 *May*: The Condition was to pay 20 *l.* the 11th day of *May* next ensuing; this shall be intended the next 11th day of *May*, the same *May* when the Obligation was made, and not in the next Month of *May*, 2 *Rolls Abr. 255. Crook Jac. 646. Prescot's Case.*

A Condition to pay 60 *l.* on the 25th of *June* 12 *Jac.* The Defendant pleads he paid it the 20th of *June* 12 *Jac.* The Plaintiff replies, he did not pay it the said 20th of *June*. Issue and Verdict.

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dict *pro Quer.* it is Error; the Issue is taken *dehors* the matter of the Condition, and so an ill Plea and void Issue, and not aided by the Statute of 32 H. 8. for it may be the Obligation was not forfeited, notwithstanding this Verdict, *Crook Jac.* 435. *Holmes and Brocket.*

The Defendant demanded *Oyer*; which was to pay mony the 31st day of September, where in truth there are not so many days in September, and he pleads *solvit ad diem* upon which they were at Issue; and found for the Plaintiff, and Judgment: For the Condition being impossible, the Obligation was due presently; and it was an Issue upon an insufficient Bar, which being found for the Plaintiff, it is helpt by the Statute, as in *Nichols's Case*, in Payment pleaded in Bar upon a single Obligation, *Jones Rep. p. 140. Jiggon and Purchafs.*

The Bond was dated in *March*, and the Condition was for payment *super vicefimum octavum diem Martii prox. sequentem*; *per Cur.* it shall be understood of the currant Month; had it been *sequentis* perhaps *aliter*, cited in *Modern Rep. p. 112.*

One had put himself an Apprentice to *Sell* for seven years, and *Sell* bound himself to pay to his Apprentice, his Executors or Assigns 10 *l.* at the time of the end or determination of his Apprentiship; the Apprentice serves six years and then dyes; *per Cur.* the Obligation is discharged. Tho *per Cook*, if one lease Land to another for seven years, if the Lessee should so long live, and the Lessor obligeth himself to pay 10 *l.* at the end of his Term, and he dies within seven years, the
Mony

Money was presently due upon his death, 1 *Brownl. Rep. fo. 97. Cheney and Sell.*

The Condition is that the Obligor before such a day shall make a Lease to the Obligee for 31 years, if *A. B.* will assent to this, and if he will not assent, then for 21 years; the Obligor must make the one Lease or the other before the day, though *A. B.* might assent at any time before the day, *Dyer 347. a.*

If a Condition be to stand to the award of *J. S.* and he awards him to pay 10 *l.* at such a day, this is a good performance if he pay this before the day and the other accept it; for Payment before contains Payment at the day, *Berry and Perrin, 1 Rolls Abridg. tit. Condition p. 440. 30 Ed. 3. 32. b.* So if the Condition be to pay so much to a Stranger, and he pay it before the day, *ibid.* So if the Condition be that a Stranger shall enfeoff a Stranger such a day, and he enfeoff him before the day, this is a good performance, *ibid.*

So if the Condition be to enfeoff a Stranger after the death of *J. S.* if he enfeoffs him during the Life of *J. S.* this is a good performance, for that it continues a good Feoffment after his death, *9 H. 7. 17, 20.*

If the Condition be to make an assurance within a Month after the date of the Obligation, he is not bound by any request to do this at any certain time, but he may perform this at any time within the Month, *Perpoint and Thimbleby, 1 Rolls Abr. tit. Condition 441.* But if the Condition be to make farther assurance within a Month upon Request of the Obligee, if the Obligee request within the Month, and he refuse, though he be ready after-

afterwards within the Month to do it; yet the Obligation is forfeited, inasmuch as the time of the Month is limited to the Request, *mesme Case*, *ibid.*

The Condition of an Obligation is, If the Obligor do at all times hereafter within the space of one Month, when he shall be required, make such farther Act and Acts, Assurance and Assurances as the Obligee shall by his Counsel demand, &c. then, &c. If the Obligee do not demand any farther Assurance within the Month after the making of the Obligation, yet the Obligor is bound to make farther Assurance within a Month after Request made after the Month passed after the making the Obligation; for that the first words, *at all times hereafter*, are without limit, and the other words, *within one Month when he shall be required*, refer to the Request; and it is not like the common Covenant to make farther assurance within seven years; for Usage hath interpreted this that he shall not be farther troubled after seven years, *H. 1650. Wentworth and Wentworth, 1 Rolls Abr. 441.*

The Latitat is *ret. die Lune prox. post Sanct. Trin.* which was the 10th of July, the Sheriff arrests him the 10th of July, and takes Bond the same date with Condition to appear *coram Dom. R. die Lune prox. post crast. Trin.* it seems he ought to appear the same day and not that day twelve month, *1 Rolls Abr. 444. May and Hooper.*

If A. be bound 1 May with a Condition to pay to B. 10 l. at the Feast of St. Michael, without saying more, this shall be intended the Feast of St. Michael next ensuing, *1 Rolls Abridg. 444. Lewknor and Smalwood.*

Payment

Payment or Performance where no time is limited : Presently, or within convenient time.

IN the Condition of a Bond for payment of Mony no time is limited, it is to be paid presently, this is, within convenient time : So in other Conditions which concern the doing of transitory Acts, as delivery of Charters, &c. *Aliter* of local Acts, *Vid. pnis*, 6 Rep. 30. b. *Bothies Case*, Co. Lit. 208. a. 38 E. 3. 12. *Crook Eliz.* p. 798. *Nose and Bacon*, Popham p. 198. *Sir Rob. Brown's Case*.

If the Condition be to pay a certain Sum to a Stranger without limiting any time, this ought to be within a convenient time, 1 *Rolls Abr. tit. Condition fo.* 437. the Bishop of *Rocheſter's Case*.

The Condition was if the Defendant did sell the Tithes in R. that he should pay the Plaintiff such a Sum of Mony ; but if he sold them not, then he should deliver an Obligation to the Plaintiff for the payment of an exprefs Sum at a certain day : Moved in Arrest, that he had not convenient time, and it appeared not by the Record that he had ; but *per Cur.* there was convenient time between the date of the Bond and bringing the Action, especially a second thing being to be performed, *Stiles p.* 11. *Williamſon and Henly*.

If the Condition be to make a *Retraxit* of a Suit, he ought to do this within a convenient time. So if it be to acknowledg ſatisfaction in ſuch a Court, 6 Rep. 30. *Bothies Case*, 1 *Rolls Abr.* 436.

If

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If the Condition be to perform the award of *J. S.* who awards the Obligor to pay 10 *l.* without limiting any time, he ought to pay this within time convenient, 22 *E. 4. 25.*

A Covenant to make farther assurance at all time and times, and the Covenantee adviseth he shall levy a Fine, he shall have convenient time to do it; for the words, *at all times*, shall have a reasonable Construction, 1 *Rolls Abridg. 441, Perpoint and Thimbleby.*

A Condition to make an Obligation to the Obligee by the advise of *J. S.* of 40 *l.* immediately, yet he shall have reasonable time to do this, 18 *E. 4. 21.*

Where by the Condition a thing is to be performed upon demand, yet he shall have reasonable time to perform this after demand, 15 *E. 4. 30.*

During the Lives of the Parties, not before Request.

WHere by the Condition the Act to be done to the Obligee is of its own nature local, as to make a Feoffment, &c. there the Obligor (no time being limited) hath time during his Life to perform it, if the Obligee doth not hasten the same by Request; for this is collateral and not like to payment of Money, *Crook Eliz. 798. Nose and Bacon.* Yet when the Obligor may do that that is local in the absence of the Obligee, as to acknowledge satisfaction in the Court of Kings Bench, there he must do it in time convenient, *Co. Lit. 208. a. 6 Rep. 30. b. Botbes Case.*

The

The Condition is to do such Acts, &c. for the better assurance, &c. to B. that shall be devised by B. or his Counsel, &c. B. deviseth a Release. A. not being lettered desires to shew it to Counsel before he seal it; he shall not be allowed reasonable time to shew it, he having taken it upon him to do it, *Co. 2 Rep. Manser's Case p. 1. 1 Rolls Abr. 440.*

If the Condition be pay without limiting any time, he is not bound to pay before Request, *1 Rolls Abr. 438. Qu.*

A Condition to make assurance before the 10th of March, and if the Obligee refuse the assurance, and shall make Request to have 100 l. in satisfaction of it, then if upon such Request within five Months after he pay it, then, &c. he refused the assurance, and ten years after he makes Request to have the 100 l. *Per Cur.* it is good, and he may make Request during his Life, *Crook Eliz. p. 136. Boyton and Andrews, Id. Case, 1 Leon. p. 185.*

The Condition is to do a thing upon Request, the Plaintiff must make Request to the person, and not by Proclamation giving notice of the Request, *1 Rolls Abr. 443. Gruit and Pinnel.*

Request to, &c. *Bridgm. Rep. 39. Allen and Wedgwood, 1 Rolls Rep. 373. Crook Eliz. p. 62. Gallies Case, Keilway 95.*

Place of Payment or Performance : Where a Place is limited.

A Condition to pay Mony at London, the Action laid in Shrewsbury, *2 Leon. 37. Jay's Case.*

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If the Condition of an Obligation be to appear *coram Justiciariis apud Westm.* he ought to appear in B. and not in B. R. *Musgrave and Robinson, 1 Rolls Abr. tit. Condition, 445.*

If a place of Payment be limited by the Condition, he is not bound to pay this in any other place, 17 E. 3. 16. 1 *Rolls Abr. 445.*

If a place be limited by the Condition where it shall be performed, the other is not bound to receive this in another place. If the Condition be to come to A. at Dale to aid him with his Counsel, it is not performed if he tender his Counsel at the day at another place, 1 *Rolls Abridg. p. 446.*

In Debt on an Obligation to pay at the House of T. in *Woodstreet magna.* The Defendant pleads payment at the House of T. generally, and the *Visne* is from the Parish of *Woodstreet* generally. Verdict and Judgment *pro Quer.* It is no Error, it is only in Fact, and should have been pleaded, 1 *Keb. 440. Ashburnham versus Brabam.*

The Condition was, if he paid such a Sum of Mony at *Newton Petrarch*, that then, &c. The Defendant pleads payment at the day at *Newton predict.* the *Venire Fac.* being at *Newton* only. A *Ven. de novo* was awarded, *Crook Fac. p. 326. Dennis Case.*

A Condition to pay 10 l. at S. such a day, or 10 l. at S. such a day, tender at D. the first day saves the Condition, 22 *Ed. 4. 52. 1 Rolls Abr. 444.*

A Condition to pay 10 l. at D. if the Obligee accept this at another place, it's a good performance *sans fail*, 1 *Rolls Abr. 456. 11.*

Where

Where no Place is limited.

IF no place be limited in the Condition for payment of the Money, he must tender the Money to the person of the Obligee; but if the Condition be to deliver 20 Quarters of Wheat or 20 Load of Timber, &c. The Obligor before the day must go to the Obligee, and know where he will appoint to receive it, and there it must be delivered.

If the Condition be to make a Feoffment, it is sufficient to tender it upon the Land, for there the Livery must pass, *Co. Lit. 210. b.*

If the Obligee be out of *England*, he is not bound to seek him, *ibid.*

If a Man be bound to pay 20 *l.* at any time during his Life at a place certain, the Obligor cannot tender the Money at the place when he will, for then the Obligee should be bound to a perpetual attendance; but the Obligor must give the Obligee notice that at such a day he will pay the Money, and the Obligee must attend there to receive it; for if the Obligor then and there tender the Money, he shall save the penalty of the Bond for ever, *Co. Lit. 211. a.* But if the Obligor at any time meet the Obligee at the place, he may tender the Money, *ibid.*

There is a difference between a place of payment limited in the Obligation, and a place limited in the Condition of the Obligation. For if I am bound to you in 20 *l.* to be paid at *D.* if I pay it to you at another place, this shall not excuse me; but if I am bound in 20 *l.* on Condition

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tion that I shall pay it you at *D.* if I pay this 20 *l.* at another place; it is good if you receive it, 11 *H. 7.* 17. 9 *H. 7.* 20. *b.* Lord *Cromwells Case.* If the Mony be paid at any other place and received before the day, it is good, *Cook Lit.* 211. *a.*

A. is bound to *B.* that *C.* shall enfeof *D.* such a day, *C.* is bound to seek *D.* to give him notice and request him to be on the Land to receive the Feoffment, *ibid.*

Debt upon a Bond for payment of Mony, there being no place named in the Obligation where it shall be paid. The Defendant pleads, the Plaintiff was beyond Sea at the day of payment, and saith not *uncore prist.* Per *Cur.* this a good cause of demurrer, *Siderfin p.* 30. *H. 12 & 13 Car. 2. B. R. Hobson and Rudge.*

A Condition for a common Chirurgéon to instruct his Apprentice in his Trade, and to keep him *in domo sua propria & servitio.* If he send him a Voyage to the *East Indies* to exercise his Trade, it is a Forfeiture; but he may send him to any place in *England* to a Patient. *Aliter*, if it were a Merchants Apprentice, 1 *Rolls Abr. tit. Condition,* p. 445. *Coventre and Boswel.*

The Lessee is bound by an Obligation to pay the Rent, the Lessee is not bound to seek the Lessor; to tender it on the Land, *Hobart p.* 8. *Baker and Spain.*

In Debt on an Obligation to pay at the House of one *T.* in *Woodstreet magna.* The Defendant pleads payment at the House of *T.* generally, and the *Visne* is of the Parish of *Woodstreet* generally. Verdict *pro Quer.* and Judgment. It is no Error;

Error, it is only in Fact, and should have been pleaded, 1 *Keble* p. 440. *Ashburnham* versus *Braham*.

Debt in an inferior Court, the Condition was for the payment of Money at a time, but no place was limited in the Condition for the payment thereof. Judgment *pro Quer.* 'Twas Error, because there appears no place of payment: So that by that it cannot appear whether the cause of Action lyeth within the Jurisdiction of the Court where the Action was brought or not; therefore it should have been made appear by some part of the Record, that the Money was to be paid within the Jurisdiction of the Court, which is not here done, and therefore Judgment erroneous, *Stiles* p. 2. *Masterman's Case*.

Judgment in the Court at *Barnstaple* upon an Obligation, and assigns for Error, that the Condition was to pay Money at *W.* which is not within the Jurisdiction of the Court. *Per Rolls*, if it appear by the Declaration that the Money was to be paid out of the Jurisdiction of the Court, the Judgment is not good, and it is not necessary to swear this Plea, *Stiles* p. 225. *Dudeney* and *Coblier*.

In Debt on a Bill of 40 *l.* to be paid at *H.* (which is out of the Jurisdiction of the Court of *Fernemutha*) being in the County of the City of *N.* which is Error, the Count being upon payment generally, 1 *Keble* p. 378. *Annisson* and *Perkin*.

A Condition to perform Articles, one whereof was to pay Money, which the Plaintiff should disburse in composition of a Fine set on the Defendant

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dant by the Judges of Assize. The Plaintiff averred he had paid 50 *l. ad recept. sum. apud Westm.* and saith not *in Com. Midd.* The Defendant demurred, the Averment was ill, 2 *Keb.* 204. *Ansly* and *Anslow.*

Condition to pay Money upon Marriage.

THE Condition was to pay 100 *l.* to the Plaintiff on his Marriage-day. The Defendant pleads, he had no notice given him of his Marriage-day. Ill Plea, for no notice need to be given, 2 *Bulstr.* 254. *Selby* and *Wilkinson.*

A Condition to pay 300 *l.* in consideration of a Marriage between the Plaintiff and his Daughter; which 300 *l.* was to be paid within three Months after that he shall come to the age of 18 years, or within 18 days of the Marriage after notice made, which shall first happen. *Per Cur.* the notice shall relate to both, because it is uncertain which of them shall happen first, *Latch.* p. 158. *Read* and *Bullington.*

In Debt on a Bond to pay Money upon Marriage; the Jury may try Wife or not Wife, but not the Legality of Marriage; and it need not be alleged that the party was married at the time of the Bill. The Issue here is not *legitimo modo maritatus*, as in Dower, which shall not be tried by a Jury; but in Debt on Bond it doth not draw the Right of Matrimony in question, 1 *Keb.* 105. *Tr.* 13 *Car.* 2. *Glascock* and *Morgan.*



Conditions to pay Mony concerning Children of Bastards.

THE Condition was for the payment of Childrens Portions when they married or came to the age of 21 years. The Defendant pleads that he had paid the same *cum & quam cito* they came to their full age generally. It is an ill Plea, he ought to have shewed the time when they came to age, and when he paid this Mony, that so upon this Issue might be taken, 2 *Bulstr.* 267. *Haulsey* and *Carpenter*.

A Man was bound to pay to the three Daughters of a Stranger 10 *l.* apiece at 21 years of age. The party being sick makes his Will, and in performance of the Covenant (for which he was bound in an Obligation) devised to each of the Daughters 10 *l.* to be paid at 21. One sues for her Legacy, and a Prohibition was granted; for the intent of the Devise was, he should not be twice charged, *More n.* 368. *Margery Davies Case*.

A Condition for the payment of 120 *l.* at the full age of *J. B.* if it be demanded. The Defendant pleads, the Plaintiff did not demand it after the full age of *J. B.* Judgment for the Plaintiff; for the bringing the Action is a sufficient demand, *Crook Jac. p.* 242. *Dockray* and *Tanning*.

The Condition was to pay 10 *s.* weekly *secundum ordinem fact. per Justiciar. &c.* for keeping a Bastard Child. The Defendant *sur Oyer* pleads *nullum talem ordinem fecerunt*. Judgment *pro Quer.* Otherwise, if it had been *secundum ordinem faciend.*

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faciend. Latch. p. 125. Fermin and Randal, for the one is an Estoppel to the Defendant, the other is Executory, Noy p. 79. vide plus sub Tit. Conditions to save harmless.

A Condition to pay Money upon proof, or if such a thing be proved, then, &c.

A Condition to pay within three months next after his Arrival from Rome 10 l. the Obligee proving the same by Testimonial or Witnesses; the proof might be by Witnesses or Testimonial under the Seal of several Persons at Rome, Moor n. 307.

The Condition was, If such Lands be proved to be parcel of the Mannor of Dale, if then, &c. the Defendant pleads they were not proved to be parcel of the Mannor, and demurs; *Per Cur.* he ought to have pleaded they were parcel of the Mannor, so as proof might have been made in this Action, *Cro. Eliz. fol. 232. Elve and Sabe, Judgment pro Quer. Vide plus sub Tit. Apprentices Bonds.*

Special Conditions for payment of Money on Contract, Agreements, Contingency, &c. and pleadings thereon.

A Condition to pay 300 l. to the Plaintiff, and to add 3 l. to every Hundred if it were demanded; the Defendant pleads he paid the 300 l. and that he added 3 l. to every hundred, *secundum formam Conditionis pradiet. Verdict. pro Quer.* but Judgment *pro Defendente* upon Ar-

rest, because the Plaintiff ought to have alledged a Demand; and this being matter of substance, without which the Plaintiff had no cause of Action, it was not helped by the Issue or Verdict, though the words (*secundum formam Conditionis*) seem to imply a Demand, *Allen p. 55. Hill versus Armstrong.*

A Condition, if the Obligor pay to the Obligee 100*l.* within one month after notice of his return from *Constantinople* into *England*, that then, &c. the Defendant pleads no notice was given to him of the return, &c. Verdict *pro Quer.* Error assigned, because it is not averred that the Mony was not paid, and then no cause of Action; but *per Cur.* its no Error; for when the Defendant said he had no notice, this is a confession *per nient dedire*, that he had not paid it; and Issue being taken upon a collateral Matter, and found for the Plaintiff, he shall have Judgment, *Cro. El. p. 320. Griffin and Spencer.*

The Condition was to pay 40*l.* *per ann.* quarterly, so long as he was to continue Register to the Arch-deacon of C. the Defendant saith, the Office was granted to A. B. and C. for their Lives, and that he enjoyed the Office so long as they lived, and no longer; and that so long he paid the said 40*l.* quarterly; the Plaintiff replies, The Defendant did enjoy the Office longer, and had not paid the Mony; the Defendant demurs: *per Cur.* the Replication is not double, for the Defendant cannot take Issue upon the non-payment of the Mony, for that would be a departure from his Plea in Bar, *Mod. Rep. p. 227. Gajle and Betts.*

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A Condition, if they or either of them (two Obligors) upon request made, should pay for so many Barrels of Beer as should be delivered to them, so much for every Barrel, as should be agreed upon between them, &c. the Plaintiff sets forth he had delivered so many Barrels of Beer, and agreed for 10 s. per Barrel, which Money he had requested of one of the Obligors; he may require payment of one or the other, 3 Bulstr. p. 210. Ratcliff and Clerk.

A Condition to pay so much *per dolium*; breach is assigned for the Defendants non-payment of so many Tuns, and three Hogsheads, which *per Cur.* is ill; the Condition being not to pay *secundum ratam*, as in *Needlers Case*, of the Quire of Paper to write at the rate of so much *per Quire* for odd Sheets: *Per Hales* so much *per Tun* must be intended amongst Traders to include *pro rata*, for over or under measure; but here the Breach is assigned in non-payment of the whole, and saith not *nec aliquam partem inde*, 3 Keble Hill. 26 Car. 2 B. R. pl. 105. Ree and Barnes.

A Condition to pay all such Sums of Money as my Lord Chancellor should Tax for Costs; Sir Robert Rich reports, he thinks, 170 l. to be a fit Sum; the Chancellor subscribes, Let Costs be taxed according to the Report; its a good Taxation according to the Condition, *Harris and Pecks Case*.

A Condition to pay the Wife 50 l. *per annum* (on separation) and for non-payment the Action is brought; on Oyer, it was provided the Wife should live at such a place as A. shall appoint; Breach assigned, that she did not live so; the Plaintiff

Plaintiff replies, there was no place appointed ; the Defendant demurs ; but this being not a Condition precedent, but a Defeasance, there must be an appointment, 3 *Keble* 229. *Leech and Beer.*

A Condition that G. Deputy Post-Master of *Oxon*, for six months, should pay all such Sums as he received while he continued Post-Master ; on *Oyer* the Defendant pleads performance generally ; the Plaintiff replies, G. continued two years longer Post-Master, and such a day received so much, and paid not over : *Per Cur.* no Action lay, the six months being past, and the continuance after must be on new agreement, 3 *Keb.* 45, 59. *Lord Arlington versus Merick.*

A Condition to pay such Sums of Money for Tithes which should be levied, and upon *Oyer* of the Condition the Plaintiff demurs, and the question was, whether these words (which should be levied) shall not be construed levied, or to be levied ; and whether taxed, levied or assessed be not all one ; and agreed by the Court that it is so.

A Condition, if one who was receiver of his Profits should truly pay unto him *omnia recepta & recipienda* in the said Office ; the Defendant pleads he had paid all which he had received : *Per Cur.* he must give account of both, 1 *Bulstr.* 174. *Hewet and Painter.*

A Condition, that the Defendant shall pay from time to time the moiety of all such Money as he shall receive as Executor ; the Defendant pleads he paid the moiety of all such Sums as came to his Hands *ante diem exhibitionis Billæ* : *Per Cur.* its

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a good Plea without shewing the particular Sums to avoid stuffing with multiplicity, and this being from time to time, it would be infinite; but if it had been to pay the moiety of such Money as he shall receive, without saying (from time to time) he ought to plead specially; and another difference is this, Where the thing lies only in the Defendants notice, as to deliver all the Money in my Pocket, there I must plead specially; but here others may take notice of it, and the Plaintiff may reply, the Defendant received such a Sum, whereof he had not paid the moiety: But the Case of *H. 7.* If a Baker be bound to deliver over such Bread as from time to time he shall receive, that in an Action against him, he ought to plead how much he had received, was admitted for Law. Mr. *Siderfin* makes a Quere of this difference; *cave studens*, I conceive in the principal Case it is a distinction without a difference. 2 *Keble* 220. *Siderfin* p. 19. *Car. 2. B. R. pl. 18.* *Church* versus *Brownwick.*

A Condition to pay Money on warning.

A Condition for payment of 100 *l.* the 10th day of *January* next ensuing, on three months warning, (being dated 1 *July*,) the Defendant pleads he had not warning three months before the Action brought; if the warning be intended three months before any 10th day of *January*, then it must be given by the Obligor. *Per Twisden*, the 10th day of *January* may be intended next after three months warning, not next after

after the Bond. *Per Windham*, had the Money been payable the 10th of *January* next after the Bond, and three months warning by the Obligee, though that day pass without warning, yet the Money is not lost; but three months warning may be given after to the Obligor, and he is bound to pay, the ascertaining the day being for his benefit; payment may be made any *January* upon three months warning, 1 *Keble* 380, 415. *Lawson and Wubington. Cave.*

Condition to pay Money at several days.

A Condition to pay Money at several days; the Defendant pleads particular payments according to the Condition; the Plaintiff replies, He did not pay at such a day certain, & *hoc paratus est verificare*; ill conclusion, but its not substance, and so must be specially demurred to; it ought to be & *de hoc ponit*, &c. but on performance generally pleaded, the Plaintiff may reply with a particular Breach, & *hoc paratus*, &c. and leave the Issue to the Defendant, 1 *Keb.* 759, 766. *Charlton and Fine.*

If a Man be bound in a Bond, or by Contract to another, to pay 100 *l.* at five several days, he shall not have Action of Debt before the last day be past, *aliter* in Recognizance, Covenant and Promise. *C. L.*

The Condition was, If the Obligor pay 100 Marks to the Obligee, during the seven years next ensuing, at two Feasts by equal portions, then, &c. the Defendant pleads he had paid 100 Marks during the said seven years, at the said Feasts, and demands

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demands Judgment *si Actio*; its a good Plea, for want of the word (yearly) the Obligor is bound to pay but 100 Marks. *Benlow. n. 18. durus sermo.*

A Condition to pay 400 l. half yearly, *per Cur.* until Judgment, that a Record is made of the Bond; it may be sued on any later Breach, and the Defendant cannot plead any Breach before; and before Plea pleaded, the constant Course of the Court is to accept tender of the Mony and Charges, 2 *Keble p. 553, 555. Stern and Vanburge.*

Debt for non-performance of Articles, which were to pay so much in certain, at two days, *per equales portiones*; the Defendant saith, He had paid accordingly; the Plaintiff replies, He had not paid accordingly; the Defendant demurs generally: *Per Cur.* the Replication is a double Plea, for this goes to both days, 1 *Rolls Rep. 112. Sanders and Crawley.*

A Condition to pay Mony on a voyage; and Pleading.

TO pay Mony on the return of a Ship; the Defendant pleads, the Ship was lost before the return; the Plaintiff replies, The Ship returned such a day, and that the Defendant did not pay Mony, *absque hoc*; that the Ship was lost; the Defendant demurs, its an ill Traverse, the not payment and return being sufficient without it; its sufficient to say that the Ship returned such a day, and the Plaintiff hath not paid, *Et hoc paratus,*

*ratus, &c. 2 Keble 668. Wright and Brad-
cack.*

A Condition to proceed in a Voyage and Return, (the dangers of the Sea excepted) that the Defendant pay in 12 Calendar Months, or if the the Ship be lost before the return or payment, to be void; the Defendant pleads *navis amissa fuit*; the Plaintiff demurs, for the meaning of this Bill of Adventure is a loss by dangers of the Sea. *Per Hales*, its sufficient for the Defendant to pursue the words of the Bond, and the Plaintiff should have replied, the Ship was lost by the Defendants default, 2 *Keble 768. Boddington and Wotton.*

A Condition to pay Money yearly during Life.

A Condition to pay yearly 40 *l.* to *S.* during his Life at the Feasts of *St. Michael* and the Annuntiation, or within 30 days after every of the said Feasts; *S.* dies within the 30 days, this shall discharge the payment due at the Feast before his death, *Cro. El. p. 380. Prices Case.*

A Condition to pay yearly, and every year, to *Thomas* and *Dorothy* his Wife, during their two Lives, then, &c. the Husband dies, the payment ceaseth, the Interest is not in the *cestui que vius*; the Husband and Wife are Strangers, and the Interest of the Bond is in the Obligee, *Mod. Rep. p. 187. Slater and Carew.*

In respect of the thing it self to be done.

A Condition to perform Covenants generally:

IF a Man Lease a Mannor by Indenture, except such a parcel of Land, and in the Indenture there are divers Covenants to be performed on the part of the Lessee, and the Lessee binds himself in an Obligation to perform all Covenants and Agreements contained in one pair of Indentures, and names the said Indentures, and after the Lessee enters into the Land excepted; this is no breach of the Condition, for the Land excepted is not leased, and it is so as if it had been named, *Dame Russel and Gulwel, 1 Rolls Abr. Tst. Condition, f. 431.*

If one makes a Lease for years of a Mannor, excepting a Close, rendring Rent; and the Lessee is bound to perform all Grants, Covenants and Agreements *contenta expressa aut recitata* in the Indenture, if he disturb the Lessor in the occupation of the Close excepted, he has forfeited the Obligation; for when he excepts the Close, the other is content with this, and that the Lessor shall occupy this, and then this is the Agreement, and the said word *contenta expressa & recitata*, every of them go to the exception as well as to the residue, *Plow. fol. 67. in Dive and Manningshams Case.*

If a Man let for years, rendring Rent payable payable at *Michaelmas* and *Lady-day*, on Condition, that if he does not pay at the said Feasts, or within 14 days after, then to re-enter; and the Lessee

Lessee binds himself in an Obligation, with Condition, to perform the Covenants and Agreements of the said Lease; the Lessee pays not the Rent at the Feast, but within the 14 days, yet the Condition is forfeited, for that the Condition in the Lease is not parcel of the Reservation, 1 *Rolls Abr. Tit. Cond. fol. 431. Middleton and Ratcliff.*

The Condition of a Bond for performance of Covenants in an Indenture, doth estop to say there is no such Indenture; but it doth not estop to say there are no Covenants, *Mod. Rep. 15. Holloways Case.*

Where an Action of Debt is brought upon a Bond to perform Covenants in a Deed, and the Defendant cannot plead Covenants performed without the Deed, because the Plaintiff hath the original Deed, and perhaps the Defendant took not a counter-part of it; the Court useth to grant Imparlances till the Plaintiff bring in the Deed, and upon Evidence, if it be proved that the other Party hath the Deed, we admit Copies to be given in Evidence; but in *Qu. Imp.* the Grant of the Advowson must be shewed, *Mod. Rep. p. 266.*

If I am bound to perform Covenants, and the Covenants are in the affirmative; if the performance of them be by Matter of Fact, I may recite the Condition, and plead generally that I have performed all the Covenants, and shall not shew especially the performance of them; as if I am bound to enfeoff the Obligee of, &c. and also that I shall give to him an Horse; in Debt brought upon the Obligation, I shall shew the Condition, and shall say, *perimpleri omnes Conventiones*, and shall not shew the special matter of the performance,

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as that I gave him an Horse at such a place, &c. but if the Condition be in the affirmative, and the performance of this may be tryed by Matter of Record ; as if I am bound that I shall be nonsuit in such an Action, there I shall shew the performance of this especially ; but if the Condition be in the negative ; as that I shall not go to London before such a day, I must answer to this in the negative, 13 H. 7. 19. b. 10 H. 7. 12. b. *vide plus.*

A Condition to perform all Covenants comprised in such Indenture ; the Defendant pleads he had performed all the Covenants without shewing how ; *per Cur.* as to all the Covenants which are to be performed in the affirmative, the Plea is good ; but where the Plaintiff is to be a Party to the performance ; as if I am bound to enfeof you of two Acres in D. which you shall assign, here I must shew how ; also where words are in the disjunctive, it ought to be shewed specially ; and a Clause in the negative must be answered in the negative, 16 H. 7. 11. a. *vide* 26 H. 8. 5. *cont.* as to general performance pleaded.

Upon Oyer of the Condition, the Defendant pleads Covenants performed, and doth not set forth the Indenture, which *per Cur.* upon Demurrer he ought ; and if he have it not, he may move the Court, and have a Copy thereof : *Per Twisden* it hath been *vexata questio* heretofore who should set it forth, 1 Keble 127. *Walker versus Gibson.* 2 Keble 80. *Anonymus.*

The Court on an Affidavit by the Attorney, that the Bonds are for performance of Covenants, will order the Defendant to deliver a Copy of the Cove-

Covenants to the Plaintiff, that he may reply there are none broken, but not else but by consent, 1 *Keble* 653. *Paschal* and *Jekel*.

In Action of Debt, the Defendant pleaded it was for performance of Covenants, and that he hath performed all, not shewing forth the Indenture, to which the Plaintiff demurred; the Court agreed he must set it forth, 1 *Keble* p. 415. *Lewis* and *Bull*.

Det sur Bond, the Defendant pleads the Condition is to perform Covenants contained in a Pair of Indentures, in which are contained divers Covenants, and recites them which he had performed; the Plaintiff demurs, because he said not when he pleaded the Indenture *hic in Curia prolat'* and Judgment *pro Quer.* and *per Coke* he might take advantage of this upon the general Demurrer without shewing cause, for it is matter of substance; 1 *Rolls Rep. Duport* and *Wildgoose, mesme Case.* 2 *Bulstr.* 259.

If in Debt *sur Obligation*, with Condition for performance of Covenants in an Indenture, the Defendant pleads performance generally, this is not good unless he shew the Deed and plead this; and it is not sufficient to shew the Deed when the Plaintiff replies and prays *Oyer*, because the Plea of the Defendant ought to be special, if any of the Covenants are in the negative; and it appears not to the Court whether the Covenants are negative or affirmative until the Deed be shewn; this hath been a controverted Point in our Books; and in case the Party who will plead the Deed had not this, he ought to move the Court, and the Court will order he shall have the Deed, or a Copy of it,

Siderfin

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Siderfin 1. p. 50, 97. *Lewis* versus *Ball*, and p. 425. *Tapscot* and *Wooldridge*.

If he pleads performance generally, without shewing the Indenture, I may demur to it, 1 *Siderfin* p. 425. *Tapscots Case*.

In Debt on Bond for performance, the Defendant cannot now pray Oyer as heretofore, but must plead to the Indenture, and produce it to the Court; misentry of the date of the Deed upon Oyer, may be amended, 1 *Kemble* 104. *Anonymous*.

The Defendant pleads it was upon Condition to perform Covenants in an Indenture, *hic in Curia prolata*, and in truth the Deed was not indented; the Plaintiff had Judgment, 5 *Rep.* 20 b. *Stiles Cases*, *Cro. El.* 472. *mesme Case*.

The Defendant demands Oyer of the Condition, & *ei legitur*, which was to perform Covenants; the Plaintiff demurs generally, because the Defendant saith not *profert hic in Cur.* the Indenture; for as the Plaintiff *profert hic in Cur.* the Obligation on which he declares; so the Defendant ought to *proferre in Cur.* the Indenture which he pleads, for otherwise he may recite this in pleading, and the Plaintiff may not have answer or remedy; this is aided by the Statute 27 *Eliz.* being matter of form, otherwise had it been upon special Demurrer; the Entry upon the Roll always supposeth this to be brought into Court per the Defendant, and the Court may compe. the Plaintiff to give a Copy to the Defendant, if he swear he never had any part, or that he hath lost it, 1 *Siderfin* p. 208. 1 *Sanders* p. 8. 2 *Kemble* p. 102. *Jewans* and *Harridge*.

A Condition to perform Covenants; the Defendant pleads after the making the Bond, and before the Writ, the Indenture was cancelled by the Plaintiff; ill Plea, for the Bond might be forfeited; he ought to have pleaded performance of Covenants till such a day, which day the Indenture, was cancelled, 1 *Brownl.* 78. *Anonymus*.

The Condition was to perform all Covenants comprised within certain Indentures bearing even date with the Obligation, (and in truth the Obligation and Indenture were both without date,) *Per Cur.* they ought to have averred a date of the Obligation, and averred also that the Indenture bore the same date with the Obligation, *Anonymus*, *Noy* p. 21.

A Condition for performance of Covenants, whereof some are void by Common Law, yet it shall stand good for the rest; otherwise where part is void by Statute Law, all is void, *Hob.* p. 14. *Sir Daniel Nortons Case*, *Cro. El.* p. 529. *Lee* *vers.* *Coleshil.*

A Condition for performance of Covenants; though the Covenants broken be released, yet the Bond remains under Forfeiture, *Hob.* p. 168.

Where an Act is to be done according to a Covenant, he who pleads the performance ought to plead it specially, otherwise where it is a permittance, then it is as in the negative, in which Case *permisit* is a good Plea, and then it shall come on the Plaintiffs part to shew how the Defendant *non permisit*, 1 *Leon.* 136. *Littleton* and *Perne*.

If the Defendant pleads generally performance of Covenants, where some in the negative, and some in the affirmative; and the Plaintiff doth demur

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demur generally upon it, without shewing cause of Demurrer, Judgment shall be given according to the truth of the Case, for that default of Pleading is but matter of form, and is aided by the Statute 27 *Eliz.* except the Plaintiff for cause sheweth some are in the negative, and some in the affirmative; but if any of the Covenants be in the disjunctive, so as it is in the election of the Covenantor to do the one or other; then it ought to be specially pleaded; and the performance of it, for otherwise the Court cannot know what part hath been performed, 1 *Leon.* 311. *Oglethorpe* and *Hide*.

A Condition was for the performance of Covenants within a certain Indenture, whereof some of the Covenants were in the affirmative and some in the negative; he pleaded the Indenture and performance of the all Covenants therein generally; and it was thereupon demurred, and without argument adjudged for the Plaintiff, *Cro. El.* p. 691. *Cropwel* and *Peachy*.

In Debt *sur* Bond conditioned to perform Covenants of Under-sheriffs Bailiff, part in the negative and part in the affirmative; the Defendant as to those in the negative, pleaded negatively; and as to those in the affirmative that he had observed them; to which the Plaintiff replieth, that the Defendant was not assisting at the Arrest of *J. S.* to which the Defendant demurred: *Per Cur.* the Plea is ill without shewing how he had performed them, and yet the Replication is good to shew a cause of Action; for the naughty Plea was a trap that the Plaintiff should have demurred to, and so no cause of Action would appear;



Judgment *pro Quer. nisi*, &c. 2 *Keble* 405. *Clavel* versus *Galler*.

By the course of the Court upon Bonds of vast Sums to perform Articles, or Covenants, in Debt for non-performance may be common Bail, or according to the value of the Breach assigned at the discretion of the Judges, 1 *Keble* 124. *Siderfin* 63. *Boothbys Case*.

A Condition to perform Covenants and Agreements; one was that the Plaintiff had covenanted with the Defendant, that it should be lawful for the Defendant to cut down Wood for Fire-boot and Hedge-boot, without making waste or cutting more than necessary; the Plaintiff assigns a Breach in that Covenant (which is in truth the Plaintiffs Covenant,) exception was, That the Condition ought but to extend unto Covenants to be performed on the part of the Lessee; *non allocatur*, it is the agreement of the Lessee, though its the Covenant of the Lessor, 1 *Leon*. 324. *Stevensons Case*.

A Condition for performance of Covenants, one is against the Statute of buying Offices, the other is a good Covenant, and not concerning that, the Obligation is void in all; but for the good Covenant Action of Covenant will lie, *Cro. El.* 529. *Lee* and *Coleshil*, Q.

Debt on Bond to perform Articles; the Plaintiff Covenants to assign over his Trade to the Defendant, and that he should not take away any of his Customers, and in consideration of performance thereof, the Defendant covenants to pay the Plaintiff 60 *l.* *per annum* for Life, and pleads, that after the agreement the Plaintiff before any thing

thing done did work to *J. S.* a Customer ; the Plaintiff demurs, Judgment *pro Quer.* this is not a Condition precedent, but these are mutual Covenants, the Plaintiff need not stay to wait for performance, perhaps then he may stay as long as he lives ; but as on Bonds of Abritrament on breach of either Party hath remedy, 2 *Keble* 674. *Modern Rep.* 64. *Siderfin* 464. *Humlock* and *Blacklow.*

In Debt for performance of Covenants, they must be set out in Latin, *Allen* p. 87.

Of Assignment of a Breach on Bonds of Covenant.

IF Breach be assigned after the Action brought, its ill ; the Defendant demands Oyer of the Obligation, and it was for performance of Covenants ; the Plaintiff replies, and assigns a Breach in non-payment of the Rent the 20th day of June, 17 Car. and the Bill was filed Trin. 17 Car. which Term ended the 14th of June, therefore ill, *Siderfin* 307. *Champions Case.*

Bond of Covenants to perform the Indenture of a demise ; the Plaintiff declares he made the Lease the 28th of May to the Defendant, and that *postea scil.* 27th of the same month of May the Defendant broke the Covenant : Demur, because the breach is set forth before the Lease began, and so no cause of Action ; but by *Bacon*, where the *postea* & *scil.* are repugnant, as here they are, the *postea* shall be good to signifie the time of the Covenant broken, and the (*scil.*) shall be void, *Stiles* p. 45. *Anonymus.*



If an Obligation conditioned for payment of Mony become payable, hanging the Action, this had made the Action good; otherwise where it is conditioned for performance of Covenants, and there is a Breach pendent the Action, *Q. Siderfin, in Champions Case, p. 308.*

The Plaintiff must assign a Breach to entitle himself, (except in some Cases, *vide infra*,) on a Bond of Covenants, that the Defendant should not deliver possession to any but the Lessor, or such Persons as should lawfully recover; the Defendant pleaded he did not deliver, but to such Persons as lawfully recovered it; the Plaintiff demurs, Judgment *pro Quer.* *Per Twissden*, on affirmative Covenants general pleading of performance is sufficient, and so on negative; for its sufficient for the Defendant to plead an excuse; and the Plaintiff must assign a breach to entitle himself, *1 Keble 380, 413. Nicholas and Pullen.*

One Covenant was, That *J. B.* her Heirs, &c. should perform Covenants in a Deed Poll, whereof one was, That if *I.* died before the Plaintiff had satisfaction on Judgment assigned, then the Administrators *de bonis non* of *H. B.* should farther secure that Assignment; the Defendant pleaded performance generally; the Plaintiff replies, such a day *I.* died, and sets not forth any Breach, Judgment *pro Defendente*, *2 Keble 288, 301. Trusler and Mading.*

The Plaintiff is not bound to alledge a special Breach, when the Defendants Plea contains special Matter. A Condition to perform Covenants in an Indenture, one was, That *I.* the Defendant should permit *Guy* the Plaintiff from time to time

to come and see if the House leased by Guy and K. his Wife were in repair; I. pleads in Bar, that I. B. and K. his Wife were Tenants in Tail of the House, and had Issues, that I. B. died, K. married Guy the Plaintiff, and they two make a Lease to him for 20 years, and that W. the Issue in Tail such a day entred, before which entry the Condition was not broken: Guy replies, That William came with him upon the Land to see if Reparations, &c. and traverses the entry of William, in manner and form *prout*, and Issue joined upon the Traverse, &c. and found *pro Quer.* and Judgment; it was assigned for Error, that there was not any breach of Covenant in I. assigned, and so had shewn no cause of Action; but *per Cur.* he need not in this Case, for the special Plea of the Defendant had disabled the Plaintiff, that he could not assign any breach of Covenant, but of necessity ought to answer to the special Matter alledged. Its not like the Case of Arbitrament, in Debt on Bond to perform Award, the Defendant pleads *nul tiel Award*, then the Plaintiff in his Replication ought to set forth Award, and assign his Breach, because the Defendants Plea is general; but if in such Case the Defendant should plead a Release of all Demands after the Arbitrament, by which he offers a special point in Issue; there it sufficeth if the Plaintiff answer to the Release without assigning any Breach, *Rel. u. p. 78. Hob. cont. 1 Brownl. p. 89. Jeffry and Guy. 2 Keb. 46, 74. Harcb and Blackam.*

The Condition was, That whereas Ed. Taylor had bargained, &c. to the Plaintiff a Close, &c. and whereas the said Ed. T. hath already mortga-



ged to J. S. divers Lands in G. whereby the said Close is either mortgaged, or supposed to be mortgaged, &c. if therefore the said Close of Pasture at the day mentioned in the said Indenture of a Mortgage be redeemed and set free, &c. the Defendant pleads, the Close was not mortgaged to J. S. & sic dicit quod clausum præd. &c. fuit redempt. liberat. & exonerat. &c. the Plaintiff replies, That the said Close was mortgaged to the said J. S. and upon this Issue joined, and found pro Quer. and 'twas moved in Arrest of Judgment that the Replication was not good, for he ought to have replied, *quod pignoratium fuit* to the said Smith, and is not redeemed, for it might be redeemed before the day: Per Cur. its a good Replication. 1. The Defendant hath offered a particular point in Issue, that it was not mortgaged, and the Plaintiff answers it, when he saith it was mortgaged, and need not alledge that it was not redeemed; for there shall never be intended any redemption, because the Defendant pleads it was not mortgaged; as J. S. is bound to marry the Daughter of J. D. upon Easter-day next; in Debt on this Obligation, if J. S. pleads in Bar that the Daughter of J. D. died before Easter-day, its a good Plea, and its a good Replication that the Daughter was living on Easter-day, without saying farther, that he had not married her, because a special Plea in Bar is always answered with a special Replication in the Point alledged. 2. Because the Mortgage is supposed to be made between a Stranger and the Defendant, to whose Acts of Redemption, &c. the Plaintiff is not privy, and cannot have consance or notice of their Acts;

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its excellent Learning which hath made me more at large recite it, *Tolv. M.* 44 and 45 *Eliz. B. R.* fol. 24. *Baily and Tailor*, *Cro. Eliz.* p. 899. *mesme Case*, the difference is, such pleading after Verdict should be good, but not if demurred to; as the Condition was, the Defendant should render account of all such Goods of *A.* as came to his hands, or pay his part for them. The Defendant pleads, nothing came to his hands. The Plaintiff replies, a silver Bowl came to hands; Demurrer; Ill Replication, for he should have said, and had not paid for it, *Siderfin* 340. 1 *Reb.* 275. *Hayman and Gerrard.*

Though in Obligations (put in Suit) for performance of Covenants, the Breach ought to be more precise and particular than Actions of Covenants, because of the Penalty; yet if what is material and the substance of the Covenant be alledged it may suffice, as a Covenant was, that the Defendant (a Bayliff) should not let at large any Prisoner, that should be arrested, without Licence of the Plaintiff an Under-Gaoler. The Breach was, that the Defendant had let at large at *Westminster* sans licence, &c. such an one who was arrested, but shews not the place or time of the Arrest; *Per Cur.* he need not, the Escape being the material part of the Covenant, *Siderfin H.* 12 *Car.* 2. f. 30. *Jenkins and Hancocks.*

Debt by a Brewer on a Bond to perform Articles against his Clark; one was, that the Defendant should deliver such Ale and Beer weekly as should be delivered unto him to such Customers as he had in his Charge, and to receive the Monies due for the same, and should accompt with the Plaintiff every



every *Saturday* weekly for such Monies he should receive; for Breach the Plaintiff assigns that the Defendant did not account with him for such Monies as he had received on *Saturday* the 25th &c. Verdict *pro Quer.* Judgment was arrested; for the Breach was uncertainly alledged, because the Plaintiff doth not shew the Defendant had any Customers in his charge, or who they were, or that he had delivered Ale or Beer to them, or received any Mony of them, *Stiles p. 473. Arnold and Floid.*

A Covenant that he and his Executors and Assigns would repair a Mill, and alledgeth that the Mill was defective in Reparations, and the Defendant, his Executors and Assigns did not repair it: Def. demurs, because he did not alledge that he nor his Executors or Assigns did not repair it; for if any of them did repair it, the Action lies not; and *per Cur.* it is naught: But upon motion of the Court the Defendant waved his Demurrer, and the Plaintiff amended, *Crook Eliz. p. 348. Cole and How.*

If the breach of the Condition of an Obligation be ill assigned, the Verdict shall not aid this Default, *Sanders 2 part 179. Hele and Wotton, Kirby and Hansaker* there cited.

.. Though the Action be well brought upon the Obligation, yet when it appears the Condition was for performance of Covenants, there can be no cause of Action without some Covenant broken, and so shall not have Judgment though he hath a Verdict, *Hob. 14. in Sir Daniel Norton's Case.*

Disability,

Disability, wherein the Obligor hath disabled himself to perform the Condition.

IF a day be limited to perform a Condition if the Obligor once disable himself to perform this, although he be enabled afterwards before the day, yet the Condition is broken; as if the Condition be to enfeof me before *Michaelmas*, if before the Feast he enfeof another, yet the Condition is broken, 21 E. 4. 55.

The Condition is, if he permit and suffer all his Lands, &c. to descend, remain or revert to such an one his Son immediately after his decease without any Act, &c. The Obligor sells parcel of the same Lands, though he purchase them again, yet the Obligation is forfeited, *Benlow. n.* 34 p. 9.

Sir A. Main by an Indenture demise Lands to *Scot* for 21 years, and covenants at any time during the Life of *Scot* upon Surrender of his Lease to make a new Lease, &c. and an Obligation to perform the Covenants. *Sir A. Main* pleads in Debt upon this Obligation, that *Scot* did not surrender. *Scot* replies, that after the said Demise *Sir A. M.* had accepted a *Fine sur consance de droit come ceo*, and by the same Fine grants and renders the Land to the Comisee *per 80 ans.* Defendant demurs: *Per Cur. r.* *Sir A. M.* by the Fine levied had disabled himself either to take a Surrender, or to make a new Lease, and so hath broken his Covenant. 2. Though the first Act was to be done by *Scot* (*viz.*) the Surrender, and *Scot* may surrender (if the term for 80 years be the Interest

Interest of a future term) yet *Scot* shall have his Action without making any Surrender, for after Surrender Sir *A. M.* cannot make a new Lease, which is the Effect of the Surrender, he hath disabled himself, 5 *Rep.* 20. b. Sir *Anthony Mains Case*, *Popb.* 109. *Benl. n.* 121, 125.

So if he disable himself to perform it in the same plight, as Feoffee on Condition to re-encoss, grants a Rent-Charge, marries a Wife, &c. this is a forfeiture of the Condition, 44 *E.* 3. 9. b. *Coke on Litt.*

But if the Feoffee on a Condition to re-encoss a Stranger, and after another recovers the Land against him by default, yet until Execution sued the Condition is not broken, 44 *E.* 3. 9. b.

One promisseth to perform an Award, which is that he shall after deliver an Obligation to another in which he is bound to him, without limiting any time when this shall be performed. If he bring Debt on the Bond, and recover, and after deliver the Obligation, yet this is not any performance of the Condition; for he ought to deliver this as it was at the time of the Award made, *Tr.* 15 *Jac.* B. R. 1 *Rolls Abridg.* 447. *Nichlas and Thomas.*

If no time is limited, if the Obligor be once disabled, he is perpetually disabled, 21 *E.* 4. 54. b. *Vid. Cases del Disability*, 1 *Rolls Abr.* 447, 448.

Conditions

Conditions to perform particular Covenants.

To make Assurance.

TO make such Assurance as Counsel shall advise.

A Condition to make to the Obligee or his Assigns so good a Lease as Counsel shall advise, and the Obligee appoints him to make a Lease to J. S. he must do it ; for it is not, as shall be advised by Counsel. *Per Coke*, if the words were, *he shall make as good a Lease as Counsel shall devise*, he ought to have brought a Lease drawn by the advise of Counsel, 1 *Rolls Abr.* 424. 1 *Rolls Rep.* 373. *Allen and Wedgwood.*

To make such Assurance, &c. as the Plaintiffs Counsel shall devise ; it is not sufficient to plead, he made such Assurance, but that the Plaintiffs Counsel devised such Assurance which he had made, *Crook Eliz.* 393. *in Hutchinson's Case.*

One covenants to make such Assurance, &c. as the Plaintiffs Counsel shall advise, and he pleads performance of Covenants ; he cannot afterwards say, *Consilium non dedit advisamentum*, in *Specot and Sbeer's Case*, *Crook Eliz.* 828.

The Defendant covenants to assure such Lands by such Assurance, as by the Counsel of the Plaintiff shall be devised ; the Breach assigned in this, the Plaintiff caused such an Assurance to be drawn and ingrossed, and put Wax to it, and required the Defendant to execute it, and he refused. The Defendant demurs ; *per Cur.* it is no Breach, because

cause the Plaintiff himself devised it, *Crook Eliz. p. 297. More versus Roswel.*

On Covenant that before such a day he would make sufficient Estate of Lands to such value to the Plaintiff for term of his Life, as by the Plaintiffs Counsel should be advised. The Defendant pleads he made Estate in Lands of such a value, &c. he must shew what Estate was advised, and what Land, that so there may be an Issue, 28 H. 8. 1. b.

A Condition to make such an Estate to the Plaintiff as his Counsel shall advise, and saith *Concilium non dedit advisamentum*. It was a *Quere* whether he ought not to say, *concilium nullum dedit advisamentum*: But it is now settled, a good Plea, 11 H. 7. 23. a. 6 H. 7. 4. and need not alledge what persons were of his Counsel, and that they gave no advise, for the Plea is in the negative; but if he plead, his Counsel gave to him such advice, he ought to plead what persons were of his Counsel. Then the Replication was, that J. W. was of the Plaintiffs Counsel and no more, and he made such advice, &c. which advisement the Plaintiff notified to the Defendant: Issue on the Advice, 6 H. 7. 4.

The Defendant by protestation saith, that the Plaintiffs Counsel made not any devise, and *pro placito*, that he was not required. The Plaintiff saith, J. S. his Counsel devised a Release, and that he required the Defendant to seal it and he refused. The Defendant rejoyns he did not refuse, it is a departure, and the Issue is a *Jeofail*, 28 H. 8. Dyer 31. b.

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The Condition is to make such assurance of the Mannor of *D.* as the Counsel of the other shall advise, and the Counsel deviseth that he shall be bound in a certain Obligation that the other shall enjoy the Mannor peaceably. He is not bound to perform this, for this is not any assurance within the intent of the Covenant, 1 *Rolls Abridg.* p. 423.

part 1.

But if a Man be bound to do such Acts for the assurance of the Mannor of *D.* as the Counsel of the other shall devise; and the Counsel adviseth that he shall make an Obligation or Statute that the other shall enjoy this, he ought to perform this, 1 *Rolls Abr.* 431. *per Popb.*

To make such assurances of, &c, as Counsel of, &c. shall devise, and the Defendant by advice of Counsel demanded a Release with Warranty. *Per Cur.* this is not any assurance, but a means to recover in value, 2 *Leon.* p. 130. *Wye and Throgmorton.*

If a Man covenant to make such assurance as the Counsel of the Covenantee shall devise of an Annuity of 30 *l.* and of 300 *l.* in Mony. If the Counsel devise he shall make an Obligation to pay the Annuity, and the 300 *l.* at certain days, he is not bound to perform it, the Obligation being no assurance of the Annuity, 1 *Rolls Rep.* 423.

If *A.* Covenant to make such assurance for the payment of 100 *l.* to *B.* as his Counsel shall devise, and his Counsel deviseth that *A.* shall make an Obligation of 1000 *l.* for the payment of an 100 *l.* he ought to perform this: Otherwise, if it had been to make such reasonable assurance as the

the Counsel of the Covenantee shall devise, 1 *Rolls Abr.* p. 423.

A Conclusion to seal such assurance of Copyhold as should be devised. The Plaintiff devised that the Defendant should seal a Letter of Attorney made to one to surrender the Copyhold for him, and also seal a Bond for quiet enjoyment. The Defendant may refuse, for he is not bound to seal the Obligation; and after Verdict, Judgment was arrested, 1 *Brownl.* p. 93. *Stamford and Cookes.*

A. covenants with *B.* to make such reasonable assurance to *B.* in Fee of such Land, reserving to *A.* and his Heirs 20 s. Rent *per annum*, as the Counsel of *B.* shall advise, and after *B.* tenders to *A.* a Deed poll by which *A.* shall enfeoff *B.* of Land in Fee reserving the said Rent to *A.* in Fee; this is not any such reasonable assurance to bind *A.* to seal it, for this is a Rent Seck; and the Deed belongs to the Feoffee, and then *A.* without the Deed may not have any Remedy for the Rent, 1 *Rolls Abr.* 423. *Guppige and Ascue.* It ought to have been a Feoffment by Indenture rendring Rent, *Id. ibid.* Sect. 7.

If the Condition be to make such assurance in Law of certain Lands to the Obligee as by the Counsel of the Obligee upon Request shall be advised, and after *J. S.* was of the Counsel of the Obligee, and gives his advice to the Obligee that the Obligor shall make a certain assurance, and the Obligee gives notice to the Obligor of the said advice, and requires him to perform it, he ought to perform it; for its more convenient that the Counsel should give the advice to the Obligee, than

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than to the Obligor, for that the Obligor knows not whether he be his Counsel in this matter, 5 *Rep. Higgenbotham's Case.*

A Covenant is to make a Lease on such Covenants as the Plaintiff or his Counsel shall advise; the Plaintiff must tender this Lease, 3 *Keble* 183. *Twisford and Buckley.*

If the Condition be to assure certain Lands to such a person which the Obligee shall name, and after he assures this to the Obligee himself, it is a good performance, though it be not alledged that the Obligee named himself, for this acceptance is a nomination of himself, 1 *Rolls Abridg.* p. 424. *Husego and Wild.*

At whose Costs.

IF the assurances are to be made at the costs of him to whom they ought to be made, he may require the assurance to be made by parcels. *Aliter*, when the Covenantor is to be at the charges; yet there if the party require an assurance of parcel, the Covenantor must do it; but then he is discharged from making any assurance of that which remains, *Crook Eliz.* p. 681. *Washington's Case.*

A Condition to make a sufficient Lease to the Obligee before such a day, the same to be made at the costs of the Obligee: It is a good Plea, that the Plaintiff did not tender the Costs to him, and if then that he was ready, *More n.* 72.

That the Covenantor at the Costs of the Covenantee would assure such Lands before such a day; the Covenantor is to make the assurance what he pleaseth, and ought to give notice what
M assurance

assurance he will make, and his readines, that the other may know what costs he is to tender, *Crook Eliz. f. 517. Halling and Cornard.*

Who to do the first Act, as Notice, Request, Tender, *Vid. infra.*

Defeasance of a Statute, that if *E. M.* and his Wife before such a day should make such good assurance of an House to *W.* with such Covenants as he should accept and signifie under his hand to be reasonable, or should pay to him such a day 350*l.* then the Statute should be void. *E. M.* in *Audita Querela* surmiseth that he and his Wife were always ready to have made the assurance, and that the Conisee had not signified what assurance he would accept, nor required any, and yet he had sued Execution: Demurrer; adjudged for the Defendant. For he is not bound to devise any assurance, but it is at his Election to accept the Estate tendred, or the Mony; and there cannot be an acceptance but where there is a tender on the other part. Therefore the Conisor ought to have devised the Estate, and procured the Conisee to accept thereof, otherwise he ought to pay the Mony, *Crook Eliz. p. 718. Mills and Wood.*

A Covenant to make a Lease on such Covenants as the Plaintiff or his Counsel shall advise; the Plaintiff must tender the Lease, 3 *Keble* 183. *Twisford and Buckley.*

The Covenant is to make a Lease for three Lives before *Michaelmas*; the Defendant pleads, that none of the Lives were named by the Plaintiff. The Plaintiff demurs: Judgment was for the Defendant; the Plaintiff must name them, 3 *Keble* 183, 203. *Twisford and Buckley.*

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The Defendant pleads the Condition was, if the Defendant make an Estate to the Plaintiff of certain Land before such a day in Fee by Feoffment, Fine or otherwise, as his Counsel learned in the Law shall advise. The Plea was, *Concilium non dedit advisamentum*. The Defendant is not bound to request his Counsel to make advice, and the advisement doth not come on the part of the Plaintiff, but on the part of the Defendant. This is not like the Case of Obligors being bound to pay to the Obligees 10 l. or enfeoff him of the Mannor of S. he ought to make tender of the Monies, and in the other Case he ought to tender that he will make a Feoffment, because all comes from the Defendant, 6 H. 7. 4. *as in this Case*. The Plaintiff replies, J. S. was of his Counsel and no more, and he made such advice, which advisement the Plaintiff notified to the Defendant, so it is good, *ibid*.

If I am bound to make you such an assurance as J. S. shall devise, I am bound at my peril to procure notice; but if I am bounden to make such assurance, as your Counsel shall advise, there notice ought to be given to me, 1 Leon. p. 105. Case 141. in *Atkinsons Case*.

A Condition to perform Covenants, Breach assigned, whereas the Covenantor covenanted with the Covenantee, that he at the costs of the Covenantee would assure such Lands unto him before such a day, that the day was past, and no assurance tendered by the Covenantor, nor costs by the Covenantee. *Per Cur.* the Covenantor is to make the assurance, and to give notice what assurance he will make, and his readiness that the other may

know what Costs to tender, *Crook Eliz.* 517. *Hallings* and *Connard*. The Covenantor ought to do the first act (*viz.*) notify the Covenantee what manner of Estate he will make, so that the Covenantee may know what Sum of Money to tender; and it is all one whether the Covenant be general or particular, as to make a Feoffment, &c. and so if nothing were done before the day, the Obligation is forfeited, 5 *Rep. mesme Case*, 22. b. The Obligor having election what manner of assurance he will make, ought first to give notice to the Obligee, that he will make such assurance, *More n. 595. mesme Case*.

W. covenants for himself, his Heirs, Executors, Administrators and Assigns within seven years upon Request to convey to the Plaintiff a Copyhold Estate for life; *W.* dies, a Request must be made to his Executors; though *W.* was seised in Fee, the Executors are bound to see it done, 2 *Bulstr.* 158. *Tburdens Case*.

A Condition to perform Articles, one was, the Defendant covenanted before such a Feast to make to the Plaintiff and his Wife a Demise of, &c. *Habendum* immediately after the death of *E. F.* for 30 years; if *E. W.* to this assent then *Habend.* after the death of *E. F.* for 21 years. The Defendant pleads, *E. W.* denied his assent, and farther that the Plaintiff did not require the Defendant to make him the Lease for 21 years. Demurrer, and Judgment *pro Quer.* For the Plaintiff need not make Request, but the Defendant at his peril ought to have made the Lease for 21 years before the Feast, 1 *Anders. n. 124. f. 49. Henry Cage versus Tho. Furrbo.*

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The Condition is, if the Obligor make all reasonable Acts, &c. which shall be for assurance, &c. to be required by the Obligee before such a day, &c. a general Request is sufficient. *Aliter*, if the assurance were to be advised by the Obligee or his Counsel, there he must shew he had required such a particular assurance, as Fine, &c. and as to this the Case was thus; The Condition was, if the Defendant before *M.* do make, acknowledge and suffer, &c. all and every such reasonable Acts and things whatsoever they be, for the good, and lawful assuring and sure making of the Mannor of *D.* to *J. S.* and his Heirs, that then, &c. The Defendant pleads, that before *M.* the Plaintiff *rationabiliter non requisivit le def. ad faciend. &c. aliqua rationabilia actum & acta, quæ forent pro bona & legitima assurantia del mannor de D. &c.* The Plaintiff replies, that such a day before *M.* he requested the Defendant *quod ipse conveyret & assuaret manerium de D. al J. S. &c. secundum tenorem conditionis.* And Issue found *pro Quer.* Moved in arrest of Judgment, that there was no sufficient Breach, for that the Plaintiff ought to have required an assurance in certain (*viz.*) Fine or Feoffment; but *per Cur.* the Condition is broken; for by the Condition the Defendant is to do all and every act whatsoever, &c. so that if the Plaintiff request a Fine, Recovery, Feoffment, Bargain and Sale, the Defendant ought to do all; but not to make any Obligation or Recognisance for the enjoying the Mannor, for that is but collateral Security and not any Assurance. Then when the Plaintiff requests the Defendant to convey the Mannor in the gene-



rality ; the Defendant ought at his peril to do this by some kind of Assurance, and if upon this Request the Defendant makes a Feoffment of the Mannor, yet if after this the Plaintiff request a Fine, he ought to acknowledge a Fine also, and so upon every several Request, *Yelv. p. 44. 1 Brownl. p. 84. More n. 889. Padsey and Newsam.*

The Condition was to make an Estate of Inheritance to the Obligee at such a day and place. The Defendant pleads he was ready at the day and place to make it, &c. The Plaintiff demurs: *Per Cur. ill Plea*, he ought to have shewed that he gave notice what Estate of Inheritance he would make him, *Stiles p. 61. Allen p. 24. Brook and Brook, 5 Rep. 22.*

If a Man be bound to make a Conveyance of certain Lands; if a Warranty or Covenant be put into the Deed, he is not bound to seal it, *1 Rolls Abr. p. 424. sect. 13.*

The Condition is to make such Assurance to the Obligee, as the Obligee shall devise, and after the Obligee deviseth an Indenture, and tenders this to him, and he requires time to shew it to his Counsel, he must seal it presently, for the Covenant is peremptory, *1 Anders. p. 122. Case 117. Andrews and Eddon, 1 Rolls Abr. 424. Wotton and Crook, 2 Rep. Mansfers Case.*

The Condition is, that he shall make a good, absolute, perfect Assurance in Fee of Copyhold Lands, and after he renders this upon Condition of payment of Money; it is not any performance, for the Assurance ought to be absolute; so if it were to make farther Assurance, if he make Assurance

ance on Condition, it is not a performance, 1 *Rolls Abr.* 425. *Risbon* and *Gayre*.

It must not only be an absolute, but an effectual Conveyance. If a Man be bound to surrender a Copyhold to the use of *A.* and his Heirs on consideration of Money; if he surrender into the Tenants hands, he must get it presented, for it must be an effectual Surrender; as if a Man be bound to make a Feoffment to me upon Request, and I request him him to make a Deed of Feoffment with Letter of Attornay to *B.* to make Livery to me, and he doth so, this is a good inception; yet if Livery be not made, it is a Forfeiture of the Condition, 1 *Rolls Abridg.* p. 425. *Shan* and *Belby*.

A Condition to make assurance of Lands to the Obligee and his Heirs, and the Obligee dies, yet he must make assurance to the Heir, for the copulative shall be taken as a disjunctive, 1 *Rolls Abr.* p. 450. *Horn* and *May*. *Dubitat. in Jones* p. 181. *Eaton* and *Laughter*. For it was the intent the Heir should take by descent and not by purchase.

A Condition to enfeof two before such a day, and one dies before the day, yet he ought to enfeof the other, 1 *Rolls Abr.* 451. *Horn* and *May*. 5 *Rep.* 22. *a. Benl. n. 31. contra.*

A Condition to give and grant to him, his Heirs and Assigns. The Defendant pleads he hath been ready to give and grant; ill Plea, for he must plead that he did it. *Aliter*, if the words had been *as Counsel should advise*, 1 *Brownl. Rep.* 75. *Chapman* and *Pescod*.

Condition to enfeof Lands of such an yearly value. The Defendant pleads he enfeof him of

the Mannor of *D. in Com. W.* and of the Mannor of *S.* in the County of *S.* *Cave* Replication, for it cannot be tryed, *11 H. 7. 14.*

One is obliged to assure 20 Acres of Land, the Acres shall be accounted according to the Estimation of the Country where the Lands lie, and not according to the measure limited in the Statute, *Cro. Eliz. p. 665. Some and Taylor.*

One by Indenture bargains and sells to the Obligee all his Lands in *D.* and covenants that he will make farther assurance of all his Lands; the Breach assigned was, because he did not make farther assurance of those Lands; and it appears by the pleading, that the Bargainor had enfeoffed the Bargainee before all his Lands there; so as he had not any Lands at the time of the Bargain and Sale; and if he then had not, then the Breach is not well assigned, and so held *tota Curia.* But if one enfeoffs another of his Lands, and afterwards bargains and sells them by name, and covenants to make assurance, he is bound to make assurance accordingly, *Crook Eliz. p. 833. Lane and Hodges.*

The Condition was, whereas the Defendant had granted an Annuity to the Plaintiff, that the Defendant should make farther assurance to the Plaintiff for the enjoying thereof within one Month when he should be thereunto required; the Month shall begin from the time of the Request, *Stiles p. 242. Wentworth's Case.*

A Man by Deed, indented, bargained and sold Lands to another in Fee, and covenanted by the same Deed to make him a good and sufficient Estate in the said Lands before *Christmas* next; and

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and afterwards before *Christmas* the Bargainor acknowledged the Deed, and the same is enrolled; *per tot. Cur.* by that Act the Covenant was not performed, for he ought have levied a Fine, or made a Feoffment, &c. 3. *Leon. p. 1. Anonymus.*

Condition of Covenant for quiet Enjoyment.

D was bound to *H.* on Condition that *H.* and his Heirs might enjoy certain Copyhold Lands surrendered to him. The Defendant pleads the Surrender, and that the Plaintiff entred and might have enjoyed the Lands. The Plaintiff replies, that after his Entry one *G.* entred upon him and ousted him. *Per Cur.* Replication ill, because he did not shew he was evicted out of the Land by lawful Title, for else he had his Remedy against the wrong doer, *Vaugh. p. 121, 122. Hammonds Case.*

The Defendant leased to the Plaintiff an House by the words of *Demise and Grant*, which words import a Covenant in Law; and the Lessor covenanteth that the Lessee shall enjoy the House during the term without Eviction by the Lessor or any claiming under him (which express Covenant was narrower than the other) and gave Bond to perform Covenants. The Plaintiff grants his term over to a Stranger. The Plaintiff assigned for Breach, that one *S.* entred upon the Assignee, and upon Ejectment recovered against the Assignee. Debt was brought upon this Bond; *per Cur.* by this Covenant in Law the Assignee shall have a Writ of Covenant, and for this breaking the Covenant in Law the Obligation was forfeited

feited; but because the Plaintiff did not shew that S. had an ancient Title, (for otherwise the Covenant in Law was not broken,) therefore Judgment against the Plaintiff, 4 Co. Rep. 80. b. *Nakes Case*, Cro. El. p. 674. *id. Case*.

If I. covenanteth with B. to enter into a Bond to him for enjoyment of such Lands, and do not expresse what Sum, he shall be bound in such a Sum as amounteth to the value of the Land, 5 Rep. 78. a. in *Samons Case*.

The Defendant pleads performance of Covenants; the Plaintiff alledgeth a Breach upon this Covenant, that the Lessee should enjoy the Land without any lawful interruption or disturbance of the Lessor or his Executors, and shews that the Executors entred upon him, and ousted him, and shews not any interruption for a just cause, and adjudged good, 1 Brownl. 80. *Ratcliffs Case*.

Debt on Bond to perform Covenants; the Covenant was for quiet enjoyment, without let, trouble or interruption, &c. the Plaintiff assigned his Breach, that he forbade his Tenant to pay his Rent; *Per Cur.* its no Breach unless there were some other Act, 1 Brownl. p. 81. *Witchcot and Liveseys Case*.

Vide *Moor n. 156. Broughton and Conrey*, Where the Defendant is not bound to warrant peaceable possession to the Vendee, but only for Acts by himself done or to be done.

The Condition was, If the Defendant warrant and defend an Ox-Garig of Land to the Plaintiff against J. S. and all others, that then, &c. Resolved that the word *defend* shall be taken as a Defence against lawful Titles, and not against Tres-

Trespases : And *per Anderson*, one Covenants to make a Lease of all his Lands in *D.* and in *D.* he hath as well Copyhold as Freehold Lands, he is not by this Covenant to make a Lease of his Copyhold Land, for that he cannot do *sans* Licence, *Moor n. 294. Crocock and White.*

An Action is brought against the Heir of *Edmund A.* the Condition, Whereas the said *Ed. A.* such a day hath granted and given to the Plaintiff the Presentation to the Church of *D.* if therefore the said *Ed. A.* from time to time shall make good the said Grant from all Incumbrances made or to be made by him and his Heirs, that then, &c. the Grantor died, the Church became void, the Heir of the Grantor presented, this tortious Presentation is no Breach, but this extends only to lawful disturbance by the Heir; for it appears by the pleading the Heir had no right to present, his Father having granted that before. *Per Hobert* the words shall be construed as if it had been said that he shall enjoy the same from any Act or Acts made by him or his Heirs; and in this Case there ought to be a lawful Eviction to make a breach of the Condition; but otherwise, if the Condition had been that he shall peaceably enjoy from any Act or Acts made by him or his Heirs, for in this Case a tortious disturbance would have been a Breach of the Condition, *Winch p. 25. Dr. Hunt versus Allen.*

The Condition was, That he should enjoy such Lands *sans* Eviction; the Breach was assigned in the Recovery by Verdict in *Ejectione Firme*, upon a Lease made by one *Essex*, and doth not shew what Title *Essex* had to make the Lease,
but

but avers that *Essex* had good Title, and it might be he had Title derived from the Plaintiff himself after the Obligation made, and therefore he ought to shew that he had good and eigne Title before the Lease made; and in the Exchequer-Chamber the Replication held ill, *Cro. Jac. p. 315. Kirby versus Hansaker, 2 Sanders, Hele and Wotton*, though this was after a Verdict, *2 Sanders 177, 178. Id.*

The Condition was, If the Obligee peaceably enjoy an Acre of Copyhold Land according to the Custom of the Mannor; the Defendant pleads by Custom of the Mannor the Obligee ought to pay to the Lord a Rent, and for non-payment the Lord to re-enter, and that the Obligee did not pay it, and the Lord entred, and demanded, Judgment *fi Actio, bon Plea, Benl. p. 32.*

The Condition was to enjoy peaceably against *M.* Breach assigned that *M.* had entred and cut down five Elms; upon Evidence it was *A.* Servant of *M.* by commandment and in the presence of his Master, had entred and cut, and good, *1 Leon. 157. Seaman and Browning.*

Debt on Obligation for performance of Covenants; Breach assigned was, the Defendant Lessor covenanted, that it should be lawful for the Plaintiff, being Lessee, quietly to enjoy the Land, and that the Lessor himself ousted him; this illegal ouster was a Breach of the Covenant, *Cro. Bl. 543. Corus Case.*

The Condition is, If such Lands be discharged of all Incumbrances made by him, except the Estate and Title of Jointure of his Wife *Elizabeth*, that then the Breach is assigned, that the Defendant

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dant before the Obligation made, had surrendered these Lands to the use of *Elizabeth* his Wife; its no Breach, *vide Cro. El. p. 761. Woodward vers. Damock.*

In Debt on Bond against Baron and Feme being made in her Widowhood, with Condition that she, her Heirs or Assigns keep Contracts and Covenants made between former Husband and his Lessee, the Plaintiff; and there was an Agreement that the Plaintiff should enjoy a Warren of the Demise of the former Husband, and that he entered till put out by the Defendant; Issue on the Agreement, found *pro Quer. Jones* moved, there was no Estate alledged in the former Husband *in jure Uxoris*, whereby though the second Husband be assigned in Law, yet he enters of his own wrong, and not as claiming under her; but *per Windham*, its not requisite that the Husband be Assignee of the Estate, but her Assignee of Contract, 1 *Keble* 348, 512. *Hall* versus *Creswel* and his Wife; Judgment *pro Quer.*

A Covenant to save harmless from lawful Eviction; the Defendant pleads performance; the Plaintiff replies, That *J. S.* took out a Writ of *Hab. fac. poss. in B. R. debito modo exeunt* and by vertue thereof entered and expelled him; *per Cur. debito modo* is not sufficient without shewing particulars; he ought at least to recite the Term of the Judgment, but not the Title of him that evicted, 1 *Keble* 379. *Nicholas* and *Pullen.*

The Condition was, That the Obligor should not enter nor claim a certain House; the Defendant said, he did not enter nor claim; the Plaintiff replies, he claimed; no Plea; he should say he came

came to the Land; and claimed the Land, and entred into the Land, and nothing shall be traversed but the Claim, 4 H. 7. 13. not the Entry.

A Condition to discharge a Mesuage of all Incumbrances; there one may plead generally that he did discharge it of all Incumbrances; but if it be to discharge it of such a Lease, he must shew how, 1 Brownl. 63.

The Condition was, That he shall suffer his Lessee for years to enjoy, &c. and that without the trouble of him or any other Person; a Stranger enters *per eigne Title*, the Condition is not broken, for this word *suffer* is a passive; and all the rest is to be referred to this; but if any procurement or occasion of disturbance be by the Lessor, his Executors or Assigns, then he forfeits the Obligation, 2 Ed. 4. 2. b. 1 Rolls Abr. 425. Q. 1.

A Man is bound to warrant Lands by Obligation, in *Action de Det port*, *pacifice garvisus est* is no Plea, for its but an Argument that he had warranted, and its but a fallible Argument, for the Party may enjoy peaceably without having Warranty, Dyer 42. b. 43. a. 2 Co. fol. 3.

A Condition peaceably to enjoy from the 1st of Febr. usq; Michaelmas-day Tithes, paying half yearly during the Term, and on default of payment, the Defendant (Lessor) to be free from all Obligation to the Plaintiff; he replies, he assigned a Breach in non-payment of Rent at Michaelmas, which is after the Term ended, and so the Defendant demurs; Also the substance of the Suit is quiet Enjoyment, and therefore ought not to be

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be taken by protestation; *sed per Cur.* enjoyment need not be answered where its defeasance by payment of the Rent, yet Judgment *pro Def.* 3 *Reb.* 554. *Biggin and Bridge.*

A Condition that he shall suffer his Lessee for years to enjoy his Lands during the Term, and that without trouble of him or any other Person; a Stranger enters *per eigne Title*; *per Cur.* the Condition is not broken, for that this word *suffer* is a passive, and all the residue is to be referred to this; but if any procurement or occasion of disturbance by the Lessor, his Executors or Assigns, then he hath forfeited the Obligation; a Man is bound to permit Land to descend to his Son, he need not aver that this had descended to him, 1 *Rolls Abr.* p. 425. Q. 1.

A Condition to perform Covenants in a Lease, one was, That he should enjoy such Lands let to him quietly, without interruption; and the Plaintiff in his Replication sheweth *in facto*, that the Defendant the 20th of *March*, 30 *Eliz.* had disturbed him, and in that assigned the Breach; the Defendant by Rejoinder sheweth, that in the Indenture there was a Proviso, that if he paid 10 *l.* the 31 of *March*, 30 *Eliz.* that the Indenture and all therein contained should be void, and alledged he paid 10 *l.* at the day (but this was after the disturbance supposed) and the Plaintiff demurs: Judgment *pro Quer.* for by the Covenant broken before the Condition performed, the Obligation was forfeited; and its not material that the Covenants became void before the Action brought; but by *Wray*, if the Proviso had been, that upon the payment of the 10 *l.* as well the
Obli-

Obligation as the Indenture should be void, *alibi* for then the Bond was void before the Action brought; so where a Parson made a Lease for years, in which were divers Covenants, and after he became *non* resident, by which the Indenture became void, yet he may maintain an Action of Covenant for a Covenant broken before his *non* Residency, *Cro. Eliz.* p. 244. *Hill and Pilkington*, *Dyer* 57. *Bylones Case*.

The Condition was, If the Obligee, his Heirs and Assigns shall and may lawfully hold and enjoy a Mesuage, &c. without the let, &c. of the Obligor or his Heirs, or of every other Person, discharged, or upon reasonable request saved harmless by the said Obligor from all former Gifts, &c. the Defendant pleads no request was made to save him harmless; Judgment *pro Quer.* because the Defendant hath not answered to all the the Conditions, (*viz.*) to enjoying of the Land; and there were two Conditions, (*viz.*) the enjoying and saving harmless, *Moor* n. 756. *Creswell* and *Holmes*.

Debt to perform Covenants in a Lease, one was for quiet enjoyment against all claiming Title; the Plaintiff assigns for Breach, that a Stranger entred, but saith not *habens titulum*. *Hales*, *habens titulum* at that time would have done; *Dyers Case* is, another entred claiming an Interest, but that is not enough, for he may claim under the Lessee himself: If the Covenant had been to save him harmless against all lawful and unlawful Titles, yet it must appear that he that entred, did not claim under the Lessee himself, *Mod. Rep.*

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101. 3 Keble 246. *Norman and Foster*, Hob. 34.
Tisdale and Essex, Moor 861.

The Condition was, if neither *J. S.* nor *J. B.* nor *J. G.* did not disturb the Plaintiff in his possession of such Lands by indirect means, but by due course of Law. The Defendant pleads that neither *J. S.* nor *J. B.* nor *J. G.* did disturb the Plaintiff by any indirect means, but by due course of Law; *Q.* if Plea good, 2 *Leon.* 197. *Dighton and Clark.*

K. was seized, and leased for years to *J. H.* Husband of *Isabel*; and *J. H.* being so possessed, by his Will devised, that the said *Isabel* should have the use and occupation of the said Lands for all the years of the said Term as she should live, and remain sole; and if she died or married, that then his Son should have the residue of the said Term not expired: *J. H.* died, *Isabel* entred, to whom the said *Kidwilly* conveyed by Feoffment the said Lands in Fee, and covenanted that the said Lands from thence should be clearly exonerated *de omnibus prioribus barganiis titulis iuribus & omnibus aliis oneribus quibuscumq.* *Isabel* married and the Son entred: *Per Cur.* this possibility which was in the Son at the time of the Feoffment, though it was not actual, yet the Land was not discharged of all former Rights, Titles and Charges; by the Marriage of the said *Isabel*, its become an actual Charge, and the Term is not extinct by the acceptance of the Feoffment, 1 *Leon.* p. 92. n. 120. *Hamington and Rydear.* I am bound in a Statute, and afterwards sell my Land with Covenant *prout supra*; here the Land is not charged; but if the Condition in the Defeasance

be broken, so as the Conusee extends, now the Covenant is broken, 1 Leon. p. 93. *ibid.*

On Covenant to enjoy *absq; legali molestatione* of the Defendant; the Defendant pleads performance; the Plaintiff replies, by entry of the Defendant Lessor, which is intended tortious, and and so no breach, for which cause the Defendant demurs: *Per Moreton*, Entry and lawful Entry are all one as to the Lessor; and *Rainsford* conceived a general Entry no Breach, the general Covenant being restrained by special Covenant against any lawful let, 2 Keb. 717. *Lee and Dalston*.

Debt on Bond to perform Covenants, one of which was, That the Plaintiff should not be interrupted in his possession of certain Lands by any Person that had lawful Title, and particularly that he should not be interrupted by one *Thomas Antony* by vertue of any such Title; the Defendant pleads performance; the Plaintiff replies, 1 No. 20 Car. The Defendant made the Lease to the Plaintiff, and 3 No. he entred; and that 17 Aug. 20 Car. before the Defendant made a Lease to *Antony* for years yet to come, who 20 Aug. 20 Car. entred; the Defendant pleads the Lease to *Antony* was on Condition of re-entry for non-payment of Rent, and that before the Lease made to the Plaintiff the Rent was behind, & *legitimus demandat. secundum formam Indenturae*, and he re-entred, and made the Lease to the Plaintiff; upon general Demurrer *per Cur.* the Demand was not sufficiently alledged, for he ought to set forth when and where it was made, that the Court might know if it were legal; but for a flaw in the Plaintiffs Replication, because he alledged his

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his Entry after the Lease made to *Antony*, so that it appears not he was interrupted by him; the Opinion of the Court was against the Plaintiff, *Allen p. 19. Colman and Painter.*

Debt on Bond conditioned, that if the Obligee, his Executors and Assigns from the time of the Obligation may enjoy such Land, &c. The Defendant pleads, that *post obligationem* until the day of the Bill the Plaintiff had enjoyed that Land; Plaintiff demurs. 1. Because the Defendant doth not say *a die consecutionis scripti obligatorii & semper post; non allocatur*, a Bar is good to common intent, and it shall be taken he always enjoyed it, unless the contrary be shewn, which must come on the Plaintiffs part. 2. Because he does not plead the Plaintiff and his Assigns enjoyed it; *non allocatur*, for it shall not be intended the Plaintiff made an Assignment, unless he himself had shewn it; Judgment *pro Def.* but it was moved to have the Plaintiff discontinued his Suit, for otherwise he should be barred of his Debt, whereas he had good cause of Action, and the Court adjourned it till next Term, that in the interim he might discontinue, *Cro. Car. 195. Harlow and Wright.*

The Plaintiff by Deed indented, leased to the Defendant a Farm called *D.* except one Close by Name; Lessee Defendant was bound in a Bond to perform all the Covenants and Agreements in the said Indenture, and pleaded he had performed all the Covenants; the Plaintiff assigns for breach, that the Defendant entred into the Close excepted; the Defendant demurs: *Per Cur.* the Obligation is not forfeited by this disturbance; this Exception is not such an Agreement as is within the intent

of the Condition, its an Agreement, that the Land excepted shall not pass by the Demise, but no Agreement that he shall occupy; but sometimes an Exception is an Agreement that shall charge the Lessee, but this when he agrees on his part, that the Lessor shall have a thing *debors*, which he had not before; as except a Way or Common, or any other Profit, a Prender, that is Agreement of the Lessee that he shall have the Profit, and if he bound to perform all Covenants and Agreements, if he disturb him in this, he shall forfeit the Obligation, *Cro. Elix. p. 657. Lady Russel versus Gullwell, Moor n. 713. id. Case.*

In a Lease for years, the Defendant Covenants that the Plaintiff should enjoy it during the Term; on Demurrer the Case was, Tenant *pur vie* levies a Fine to him in Reversion, *come ceo*, &c. the uses were to the Conusee and his Heirs, on condition to pay to the Tenant *pur vie* 4 *l.* per ann. during his life, and upon default that it should be to the use of the Conusor for his life; the Conusee made a Feoffment to the Defendant, who leased to the Plaintiff; the 4 *l.* was not paid nor demanded; the Tenant *pur vie* enters on the Plaintiff; this is a breach of the Condition without any demand of the Rent, for its a Sum in gross, and not issuing out of the Land; the Covenant is, that the Lessee shall absolutely enjoy it; and this Condition is properly to be performed by him who hath the Freehold, and it was held that this Feoffment had not destroyed the future use, which is to arise for non-performance of the Condition, *Cro. El. 688. Smith and Warren.*

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Two make a Lease for years by Indenture, and covenants that the Lessee should not be disturbed, nor any incumbrance made by them; one of the Lessors makes a Lease to a Stranger who disturbs, on Bond to perform Covenants, its a breach of the Condition, for (them) shall not be taken jointly, *Lach. p. 161. Merritons Case.*

Condition of the Obligation was, That the Plaintiff should have, hold and enjoy Lands acquitted from all Charges and Incumbrances, and for breach the Plaintiff shew there was a Rent-charge granted by the Predecessor, under whom the Defendant claimed, which is yet undischarged; the Defendant demurred, because the acquittal goes to the having and holding the Land, and its not shewed that the Plaintiff was ever in possession, nor that he was charged or endamaged, to which *Twisden* and *Keeling* agreed; but by *Windham* the Defendant ought to shew how he had discharged and acquitted from the very Rent, and not to let it perpetually hang over him; but by all the Court, if the Acquittal refer to the Land it self, or to the Person, the Defendant must shew how, *1 Keb. fol. 927. King and Standish.*

A Covenant, that the Indenture of a Lease at time of the Assignment is a good, true and indefeasible Lease, and that the Plaintiff shall enjoy, &c. without the let or interruption of the Defendant, or of any claiming by, from or under him, and shews for breach, that before he that made the Lease had any thing, one *J. S.* was seized in Fee, and that he which made the Lease entred upon him, and disseised, and leased *prout*, and that *J. S.* re-entred upon him, upon which

Replication the Defendant demurs, & *per Cur.* the word *indefeasible Lease* shall be construed as a distinct Sentence from the last words, *that he shall enjoy it without the interruption of the Defendant*, *Siderfin* p. 328. *Gainsford* and *Griffith*, 1 *Sanders* p. 51.

Johnson and *Varvisor* Joyntenants of a Mill by Lease for years. *Varvisor* assigns all his Interest in the Mill to another without *Johnsons* assent or privity, and dies. *Johnson* after recited this Indenture by Lease, and that all came to him by Survivorship, grants the said Mill and all his Estate, Title and Interest to *Procter*, and covenants that he shall quietly enjoy it notwithstanding any Act done by him, and Bond of Covenants, *Act. de Det sur Bond*. *Johnson* pleads, that the Plaintiff had enjoyed this notwithstanding any Act done by him. *Procter* replied, that *Varvisor* Joyntenant with *Johnson* assigned his Estate to *J. D.* who entered and expelled him. The Defendant demurs; adjudged against the Defendant, for the Grant was never good, for he had no power to grant one Moiety, and yet he had expressly granted the Mill to *Procter*. And the Condition of the Obligation being to perform all Grants, the Grant being defective at the first as to a Moiety which is the Substance of the Agreement of all the Parties, this is not qualified by the Covenant ensuing, and it is not like to *Nokes Case*, 4 *Rep.* for there the Grant was good for the whole, and becomes ill by Eviction afterwards, and therefore the Covenant ensuing qualified the general Covenant. *Yelv.* p. 175. *Johnson* and *Procter*, *Lit.* 206. 1 *Bulstr.* 3, 4.

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A Covenant that the Lessee shall enjoy against the Lessor and all claiming under him. The Defendant exhibited a Bill whereby the Lessor appeared to be in Trust, and adjudged this was no Breach, *Selby and Chute* cited 2 *Keb.* 288. 1 *Brownl.* p. 23.

The Covenant was, if the Defendant sued or troubled, charged or vexed the Plaintiff: *Per Cur.* a Suit in Chancery is within the Condition, 2 *Keb.* 288. *Ashton and Martin.*

A Condition to surrender a Copyhold, and that the Plaintiff shall enjoy this without the let of any claiming under the Defendant and of one *Lancelot Simons*. The Defendant pleaded Surrender, and that the Plaintiff had quietly enjoyed this. The Plaintiff replies that one *Jane Simons* claiming under *Lanceoles* ousts him. Demurrer, and Judgment *pro Quer.* The Case was; this Copyhold was granted to *Patience Hussy* for Life, the Remainder to *Lanceolet S.* in Fee; and that after and before the Obligation *Lancelot* surrenders his Remainder to the use of *Patience* for Life, and after to the use of *Lancelot* and *Jane* for their Lives, and after to *Lancelot's* Heirs: *Lancelot* and *Patience* dye, and after the Obligation *Jane* enters. The cause of Demurrer was that *Jane* took nothing by the Surrender, for the Surrender to *P. H. pur vie* was void, she having an Estate *pur vie* before, and consequently the Remainders by notice upon this void Estate are void also. But *per Cur.* the Estate limited to *Jane S.* shall be by way of present Estate and mediate Settlement, and not by way of Remainder, 1 *Sanders* p. 150, *Wade and Balch*, 2 *Keb.* 341. *Id.* Case, *Siderfin* p. 360.

The Condition was, whereas *J. F.* claimed to have Lease for years of the *M. of D.* made to him by *W.* If the said Defendant keep without damage the Plaintiff from all Claim and Interest to be challenged by *J. F. de tempore in tempus* during the years, &c. The Defendant pleaded after making the Obligation until the Action brought, The Plaintiff was not damnified *ratione dimissionis*, Plea good, for if he were not damnified *ratione dimissionis*, then he was not damnified by reason of any Claim or Interest, 3 *Leon.* 118. *Braimbwait's Case.*

To enjoy *absque legali impedimento* of *J. S.* the Breach is, that *J. S. habens jus* entred, it is a sufficient Breach, 2 *Keble* 878. *Procter and Newton.*

On Covenant to acknowledg a Fine.

A Covenant that the Vendor should make farther Assurance at the Costs and Charges of the Purchaser. It was alledged for Breach that a Note of a Fine was devised and ingrossed in Parchment, and delivered to the Vendee to acknowledg the Fine at the Assizes, which he refused to do; and the Plaintiffs Breach was demurred upon, because he did not offer Costs to the Vendee, and *per Cur.* its ill, 1 *Brownl. Rep.* 70. *Preston and Dawson.*

On a Covenant for farther Assurance; the Breach is, Advice and Request of a Fine by such a Counsel, and shews *Dedimus Potestatem* to *A.* and to revive the Conusance, and the Obligor being requested, refuseth; though he shew not any
Writ

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Writ of Covenant was depending, or that the Writ was delivered to the Commissioners, and though the Fine was with Warranty, yet because the Covenant is not to levy a Fine, but to do such Acts as shall be required. Judgment *pro Quer.* *Latch* p. 186. *Tindal's Case*.

If one do covenant generally to levy a Fine of Lands, he is not bound thereby to go before Commissioners by *Dedimus*, *Stiles Pract. Reg.* 75.

I am obliged that J. S. who is a Stranger shall levy a Fine to the Obligee, the Obligee is bound to sue out a Writ of Covenant: *Aliter*, if I am obliged to you that J. S. shall levy a Fine to J. N. *Winch* p. 30. *Hill and Waldron*.

The Condition was, the Obligor shall levy a Fine to the Obligee, the Obligee ought to do the first Act (*viz.*) to sue a Writ of Covenant, 5 *Rep.* *Palmer's Case*.

The Condition was, J. S. shall levy a Fine to the Obligee before such a day. The Defendant pleads, the Obligee had not sued forth a Writ of Covenant. The Plaintiff replies, that before the Obligation made J. S. had made a Feoffment to J. D. of the Land, and the Feoffee was in possession at that time. Here the Obligee need not sue a Writ of Covenant, for by the Feoffment J. S. had disabled himself at the time of the Obligation, *Sed Quære*, *Winch.* p. 30. *Hill and Waldron*.

A Condition to levy a Fine at the Costs of the Obligor, &c. The Defendant pleads, no Fine was levied by, &c. according to the Condition. The Plaintiff demurs, because it is not averred the Defendant brought any Writ of Covenant. *Sed*

non allocatur. Per Cur. the Law is now changed, and the Fine levied before any Writ entred, and therefore must be done by the (Plaintiff) without any Writ, 1 *Keb.* 816. *Culpepper versus Austin.*

A Condition, that Baron and Feme being Lessees for Life should levy a Fine to a Stranger at the Costs of the Stranger; and also that they should levy a Fine of other Lands to a Stranger at their Charge. The Obligor saith, the Baron and Feme did offer to levy the Fine if the Stranger would bear the Charges. The Plaintiff demurs, and *pro Quer.* because the levying the second Fine had not reference to the other, for (and also) make them two distinct Sentences, 1 *Brownl.* 94. *Hollingsworth and Huntly.*

A Condition that he and his Wife would levy a Fine upon reasonable Request of the Obligee; he made the Request the Wife being very sick, so as she could not travel: Resolved, her Sickness saved the Obligation from the Forfeiture, *Morgan.* 256.

A Condition that such a Woman should make such farther reasonable assurance to *J. D.* as *J. D.* should devise: *J. D.* devised a Fine and required her to come before the Judge of Assize to acknowledge; she came, and the Judge refused her as *non compos mentis*: Per Cur. the Condition was not broken, because it is to make a reasonable assurance: *Aliter*, if the words had been special to acknowledge a Fine, 1 *Leon.* p. 304. *Pet and Cally.*

If a Man be bound to another to make such assurance of Lands as the Obligee shall devise, it is not sufficient for him to devise a Fine, and to take out a *Dedimus*, &c. upon it, and require his Conscience

Conifance in that, for this is but a fpecial way of taking the Conifance. But if there were a Pro- vifo that he fhould not go above five miles from his Houfe, then if his Houfe be above five milks from *Westminfter* he is bound to make his Conifance on the *Dedimus*, this hath been the dif- ference, *Allen p. 69.*

One covenants for farther affurance to levy a Fine of all his Lands in *D.* which was four Houfes, and tenders a Fine. The Defendant pleads at the time of the Covenant he was only feifed of two Houfes, and that the other two defcended to him afterwards, and good. A Covenant to levy a Fine of two Acres, and the Fine is of four Acres by the name of two Acres comprehended in the Indenture, it is not good, 1 *Rolls Rep.* 103, 117. *Wilson and Welsh*, 2 *Bulstr.* p. 317. 1 *Rolls Abr.* 425.

A Covenant to make farther Affurance and to do any Act or Acts, &c. and fhews he demand- ed of him, and tendred a Note of a Fine, com- prehending that he would levy a Fine of three Mefluages, &c. and that he required him to ac- knowledg it before a Judge of Affize. The De- fendant pleads in the Note were more comprifed than he intended to affure, it is no Plea, *Cro. Jac.* 251. *Bonlay and Curtes.* If one be bound to levy a Fine to another, he is not bound to fue forth the Writ of Covenant, but he who is to have ad- vantage of the Fine is to do it; and in the Cafe aforefaid, he ought to levy a Fine upon this Note, notwithstanding there was no Writ of Covenant then hanging; and in the faid Cafe though the
Note

Note contained more Acres than the two Yard-Lands, this is good, 1 *Bulstr.* 90. *Id. Case.*

For performance of Covenants; one was to marry S. the Daughter, another, that Sir E. S. and his Wife should levy a Fine of such Lands to the Defendant and to the Plaintiffs Daughter S. and to the Heirs of their Bodies. 3. That the Inheritance of the Premises should remain in the said Sir E. S. or himself until the Fine levied. 4. Whereas he had granted a Lease for years to S. the Plaintiffs Daughter, that he had not made any former Grant, nor would afterwards make any Grant thereof without the Plaintiffs assent. The Defendant *quoad* the last Covenant in the negative pleads, that he had not made any former Grant of the Lease, nor had made any Grant after the Obligation without the Plaintiffs assent. *Et quoad alias omnes Conventiomes*, that he had performed them. The Plaintiff demurs. 1. Because the Covenant to levy a Fine, &c. is an Act to be performed by a Stranger, and it is an Act to be performed on Record, in both which Cases he ought to plead and shew how he performed it; and it is not sufficient to plead general performance, for Acts of Record ought to be shewn specially, and the Answer to them is *nul tiel record*, and no other Issue can be taken. 2. Because the Covenant being in the disjunctive, he ought to shew specially which of them, and not generally. 3. He pleads he did not grant without the Plaintiffs assent, which is a negative pregnant, and so not good, and all allowed *per Cur.* and against the Plaintiff, *Crook Jac.* 559. *Lee and Luthiel.*

On Covenant to pay Rent.

ON Condition performed pleaded, the Plaintiff assigns the Breach for Non-payment of Rent and pleads in this manner; that in *December* he demised to the Defendant one Wine-Cellar for one year, and if the Defendant would hold the Wine-Cellar for three years paying 40 *l.* yearly during the said term, and alleges Non-payment of the Rent for one Quarter of the first Year: *Per Cur.* the Reservation had reference as well to the first year as to the two years following, 1 *Brownl.* 61. *Young and Melson.*

Debt on Bond to perform all Covenants, Payments and Agreements contained in a pair of Indentures. The Defendant pleads the Indenture and performance. The Plaintiff assigns the Breach that the Defendant had not paid half a years Rent. The Defendant replies, the Plaintiff had entred into part of the Premises the day before the day of Payment, and so at Issue. Exception was taken, because the Plaintiff had alledged no demand to be made, and the Court held, that was implied by the Issue, and that it was not necessary in this Case, the Issue arising on a collateral point, which admitted the Rent not paid, 1 *Brownl.* p. 76. *Baker and Pain*, *Hob.* p. 8. *Crook Eliz.* p. 332. *Dr. Aisler versus Wood.*

Debt on an Obligation to perform Covenants of a Lease: The Defendant pleaded he had performed. The Plaintiff assigns a Breach, and the Defendant demurs. Upon Demurrer the Case was; A Lease was made for one year, the Lessee covenants

covenants for him and his Assigns to pay the Rent so long as he and they shall have the possession of the thing let. The Lessee assigns over his Term, the Term expires, and for Rent behind by the Assignee after the Expiration of the Term, the Lessor brings the Action: *Per Cur.* though here be not an Assignee strictly according to the Rules of Law, yet he shall be accounted such an Assignee as is to perform the Covenants made between the Parties, *Stiles p. 407. Bromfield and Sir John Williamson.*

Debt lies for a Rent reserved on a Lease for years without demand, and if the Lessee be bound to pay the Rent at the day, he ought to tender it at the day before demand; otherwise it is where the Lessee is bound to perform Covenants, 1 *Rolls Rep. 216. Moses Den's Case.*

If a Man be bound to pay Rent, which is reserved upon a Lease made to him, he ought to pay it at his peril; but if it be to pay it according to the Lease, there he said it is not payable but upon the Bond; and if the Land be evicted in the *interim* before the day of Payment, the Obligor shall help himself by pleading it upon such an Obligation. But if the Condition is to perform Articles. The Defendant cannot say there are no such Articles. So bound to pay 10 *l. per annum* Rent reserved upon a Lease of Lands in *D.* the Defendant shall not plead, the Plaintiff had not any Estate in the Lands, *Quare de boc, Popham 114. Stroud and Willis.*

The Condition was, if the Obligor shall pay the Rent of, &c. according to the intent of certain Articles, &c. that then, &c. The Defendant pleads,

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pleads, the Articles did contain that the Obligor *demisit, &c.* to the Defendant *omnia talia domus, &c. in Y. in quibus* the Obligee had an Estate *pur vie per Copy, habend. pur 21 ans rendant rent.* *Per Cur.* no Rent is to be paid, for the Lease did never begin: But *per Popham*, the Obligor is to pay the Rent, though nothing be demised to him, for by the Bond he hath made it a Sum in gross, *Fenner contra, More n. 521, Stroud and Willis.*

A Condition to perform Covenants in a Lease. The Lessee doth not pay the Rent at the day, and the Plaintiff without making any Request, sues the Bond; upon this matter pleaded in Bar, the Plaintiff replied, that he was not demanded. Demurrer: If the Bond be for Rent precisely, there the Lessee ought to seek the Lessor, and tender on the Land will not excuse him; but an Obligation to perform Covenants doth not alter the nature of the Rent, 2 *Brownl. Rep.* 176. *Manly and Jennings, Quere in Hobart p. 8. Baker and Pain.*

Debt on Bond, the Condition to perform Covenants. Performance pleaded. Non-payment of Rent assigned in the Replication. The Defendant rejoins, the Plaintiff entred before the Rent-day: *Per Cur.* it is a departure, 1 *Keb.* 115, 178, 185. *Granger versus Lemborough.* This point in *Hobart p. 8. Baker and Pain's Case*, was not stirred there.

The Condition was to pay quarterly an Annuity so long as the Defendant continues the occupation of the Land. Defendant pleads payment till the 24th of June before which day the Plaintiff

tiff entred and brought Ejectment in *Trin.* and had Judgment in *Michalmas* Term. The Plaintiff demurred, because he saith not *expulit* or *amovit*; nor that the Plaintiff continued in possession, as it ought to be, being pleaded by way of Suspension; but by way of Eviction it were well enough, which the Court agreed in case it were payable as a Rent. But *per Cur.* the Entry shall be intended continuing, and there shall be no apportionment on a Bond as it might upon a Lease, 3 *Keb.* 453, 515. *Arnold* and *Foot.*

The Plaintiff assigns a Breach for Non-payment of Rent, but shews no demand at the day. The Defendant demurs, and adjudged for the Plaintiff. For when the Defendant pleads performance of all the Payments, Covenants and Agreements, it shall be intended he had really performed them, and so had paid all the Rents; and when the Plaintiff replies he had not paid such a Rent, he need not alledge a demand; for the Defendant may not say it was not demanded, for that would be a departure; yet the Obligation being general for performance of Covenants, doth not alter the nature of the Rent, but that it ought to be demanded, *Crook Car.* 76. *Chapman* and *Chapman.*

But because the Defendant pleaded generally *quod perimplevit omnes conventiones, &c.* which implies a Payment of the Rent, and the Plaintiff assigns for Breach that it was in arrear such a day. The Defendant demurs, and so confesseth it was not paid. The Plea was ill, though in such Case the Obligation is not really forfeited unless there be a demand of the Rent, *Crook Eliz.* p. 828. *Specot* and *Sheeres.*

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A Condition to perform Covenants in an Indenture, whereby he lets Land, rendant 10 *l.* per annum, or within six days after the Feast. The Defendant pleads performance. The Plaintiff assigns a Breach, that he such a day being the sixth day after the Feast before Sun-set demanded 5 *l.* Rent then due, and that neither the Defendant nor any for him was ready to pay it; for which, *Gr.* *Per Cur.* 1.^o He need not shew the certain time when he came, nor how long he remained there. 2. Whereas it was objected this demand was not good, because he demanded it as a Rent then due; for he ought to have demanded it as a Rent due the last Feast: But *per Cur.* it is not due to be demanded till the sixth day, though the Tenant, if he will, may pay it before. 3. The Condition being for performance of Covenants, Payments and Agreements, the Non-payment of Rent upon demand on the last day, was a Breach of the Bond; *Crook Jac.* 499. *Thompson and Field.*

Debt on an Obligation conditioned to perform Covenants and to pay Rent; The Defendant on Oyer pleads performance, to which the Plaintiff demurs, as being no special Answer to the Rent; which *per Cur.* is ill. Judgment *pro Quer.* 3 *Reb.* 60. *Betent and Frim.*

Per Hales, If the Lessee covenants to perform Articles in an Indenture, it is sufficient to say the Rent was demanded; but if there be an express Covenant to pay the Rent, there needs no demand, 3 *Reb.* 299. in *Drew and Baylies Case.*

A Condition to perform Covenants in a Lease: The Defendant pleads Conditions performed. The Plaintiff assigns a Breach for Non-payment of Rent.

The Defendant pleads to this a Release of all Demands. *Per Cur.* this Rent is not released by all Demands, *Siderfin p. 141. Hen and Hanson.*

In Debt on a Bond, the Condition to perform Covenants of payment of Rent and another particular. The Defendant pleads Covenants performed generally. Plaintiff demurs, because he should have pleaded to each particular performance or other particular Plea, and so wherever particulars are specified; but when it is to perform Covenants in an Indenture, performance according to the Indenture is sufficient, *2 Keb. 362. Brown and Taldery.*

On performance pleaded the party cannot after plead Rent was not demanded; *Alister* on a particular Covenant to pay Rent, for *perimplevis* implies actual performance, not by way of excuse, *2 Keb. 848. Forth and Lewin.*

The Lessee covenants to pay his Rent to the Lessor, and he pays it before the day, the same is not any performance of the Covenant: *Alister*, of a Sum in gross, *1 Leon. p. 136. in Littleton and Pernes Case.*

The Condition was, that the Defendant should pay to the Plaintiff 10 *l.* which is for Rent of certain Lands. The Defendant alledged the Plaintiff had entred upon the Land and so a suspension. The Plaintiff demurred, and adjudged for him; for this being but a recital that it was for Rent is not material; it seems the same though he had applied it by pleading to the Lease, *Hob. p. 130. St. John and Diggs.*

On Covenants in a void Lease.

THE Covenants depend upon the Lease, and the Bond upon the Covenants. If a Lease be made and after surrendered, all the Covenants and Bonds for the performance of them are void also, in *Sapeans* and *Skurro's Case*, *Yelv. p. 19. Quare.*

A Grant or Assignment of so much of a Term as shall be unexpired at his death, and a Covenant that the Grantee shall quietly enjoy; the Grantor dies; in Bond for performance the Action of Debt is brought against the Executor, though the Assignment be void; but this is a Covenant by it self, and the Breach was that the Executor entred on the Grantee. *Per Windham*, the difference is where a Deed is void in the Fabrick, there the Covenants on it are void; as when a Freehold is to commence in *futuro*, and where there is only want of Interest in the party Grantor, which the Court agreed. 2. The Condition was to keep and perform all Covenants generally, which being void, the Bond is single; if there had been no Indenture the Bond had been good single, *1 Keb. 130. Covenbursts Case.*

A Parson made a Lease for years and became bound to the Lessee to perform the Covenants in the Lease. The Defendant pleads, the Lease is void by the Statute of 14 *Elix.* because he was absent from his benefice above the space of 80 days. *Per Cur.* the Plea is good as to that Point, *3 Leon. p. 102. Cox's Case.*

One that is *mere Laicus* being instituted and inducted made a Lease for years of the Rectory, which was confirmed by the Patron and Ordinary. In Debt for performance of Covenants, *Per Cur.* this Lease shall bind the Successor Incumbent, *Crook Eliz. Costard and Windet.*

To perform Covenants in a Lease against *Stat. 32 H. 8.* Leases made to Alien Artificers, void, *Siderfin p. 357. Freeman and King, 1 Sanders Javans and Harweck, Siderfin p. 309.*

An Obligation to perform Covenants of an Obligation void by the Statute of *14 El. c. 11. 1 Lam. p. 100. St. John and Petits Case.*

If the Indenture of Covenants be made void, as by Release, &c. the Bond is void, *2 Kelle 116.*

On Covenants in a Mortgage.

A Grant, Bargain and Sale of certain Lands with a Proviso that if the Defendant did not pay 40 *l.* such a day, then it should be void. The Condition was to perform all Covenants, Clauses, Payments and Agreements contained in the Deed: This doth not extend but to compulsory Payments, and not to the voluntary Sum in the Proviso; for if he choose not to pay, he may forfeit the Land to the Plaintiff, *Yelv. p. 206. Bristow versus Knipe, 1 Bulstr. 156. Id. Cro. Jac. 281. Id. Case.*

Debt on an Obligation to perform all Conditions, Covenants, Payments in the Indenture. The Defendant pleads, one Condition was of a Lease to pay on a Mortgage, or to be void, and that he

was

was not bound to perform it. The Plaintiff demurs, (*Vid.* 3 *Keb.* p. 387.) adjudged for the Defendant, because the Land was to be lost for Non-payment, 394. *Per Hales*, the word *Conditions* would be idle, if this were not effectual; *aliter*, if the word *Conditions* was not in, and then it would be at the Mortgagors Election to pay or forfeit: But here perhaps the Lessor had no Title, and so it is requisite the Mortgagee should have his Money, 437. *Per Cur.* were it a Condition in the Indenture specially recited in the Bond, though thereby the Mortgage was forfeited, the Bond is so too upon Non-performance; but being general to perform all Covenants and Conditions, it binds only to such as are compulsory, 3 *Keb.* 454, 460, *Toomes and Chandler*.

On Covenant for Reparations.

THE Plaintiff assigns the Breach in one Covenant, whereas the Plaintiff had leased Houses, &c. the Defendant did covenant to repair all the said Houses *alia quam quæ ap- punctuat. forent divelli pro Quer.* and shewed that the Defendant had not repaired the Messuages to him demised, and averred that the House in which the Breach of Covenant is assigned *non fuit ap- punctuat. divelli*: *Per Cur.* this Averment was superfluous; for if the House in not repairing of which the Breach is assigned was appointed to be pulled down, the same shall come in on the Defendants part, to whose benefit it trencheth, for such appointment doth discharge the Covenant as to that, 1 *Leon.* fo. 17. *Sir John Smith's Case.*

The Plaintiff assigned a Breach in Non-reparation. The Defendant pleads the Plaintiff had acquitted and discharged him of all Reparations. The Plaintiff demured: *Per Cur.* this is an acquittance and discharge of the Reparations for the time past as well as the time to come, and amounts to as much as if he had released that Covenant; but the Covenant being broken, that discharge shall not take away the Action on the Obligation, which was once forfeited, 3 *Leon.* p. 69. *Anonymus.*

A Condition to perform Covenants in a Lease, which recites a Lease of a Brew-house and a Mill in occupation of *F.* with Covenant to repair all the Premises. The Defendant pleads general performance as to the Brewhouse, and as to the Mill the Tenant did not attorn. The Plaintiff demurred; *per Cur.* this is no excuse, though there be no Remedy for the Rent till Attornment, yet it was the Defendants fault he did not take a Covenant that the Under-tenant should attorn, 2 *Feb.* 879. *Lewin and Forth.*

A Bond conditioned to deliver up an House repaired at the end of the Term. The Defendant pleads, the Plaintiff agreed he should hold it for a longer time; it is a good Plea, though a Covenant is not discharged without a Deed, when it is to do any collateral Act, 2 *Feb.* 99. *Mum and Rainsborough.*

A Condition to repair and sustain two Messuages at all times. The Defendant pleads, he had performed the Condition in all, except as to one Kitchen, which at the time of the Demise was so ruinous that he could not repair it, but he pulled it down and rebuilt another, &c. this had been

a good Plea in Action of Wast, not here where he hath by his own Act tyed himself to a disadvantage, 2 Leon. 189. Wood and Avery.

Pleadings on Bonds of Covenants.

Variance.

DEbt on Bond of Covenants: After Verdict it was moved in Arrest of Judgment, that the Defendants Plea was, that *prædictus Ed.* did covenant that *R.* was seised, whereas the Defendants name was Robert that did covenant; this misrecital is not material, because here is a good affirmative, and the Bond, if this be misrecited, is single. *Contra*, if it had been an Action of Covenant; or when the Indenture by prayer of the Defendant is entred in *hæc verba*, 1 Keb. 126, *Siderfin* p. 49. Pegg and Waters.

Variance between the Indenture and the Declaration shall not stay Judgment after a Verdict, *Siderfin* p. 49. Pegg and Waters.

The Covenant was, that he will assure, convey and assign a Lease. The Defendant pleads performance. The Plaintiff assigned the Breach, *quod non assuravit, conveyavit & transposuit*, Anglice set over; and the Defendant pleaded *quod assuravit, conveyavit & assignavit* Anglice set over; and the word *transposuit* is not in the Covenant nor in the pleading of the performance thereof: It is Issue misjoyned, 2 Leon. p. 116. n. 155. Gray and Constable.

In a Debt on a Bond of performance; J. and A. were named in the Bond, but the Indentures,

as pleaded, were only betwixt *J.* of the one part and the Defendant of the other ; but were *re vera* betwixt *J.* and *A.* on the one part and the Defendant on the other. *Per Cur.* it is a variance, and Judgment *pro Quer.* 1 *Keb.* 127, 167. *Pavis and Hall.*

Where Covenants are special, they must be specially answered unto and particularly, 2 *Keb.* 54. *Herrick and Sanderson.*

Against a negative or disjunctive Condition, the Defendant must plead specially.

Debt on a Bond for performance of Covenants ; the Defendant sets forth the Covenants by a *Testatum existit*, its ill ; this in a Plea in Bar, or Debt on the Indenture, is naught, *aliter* in Covenant, 2 *Keble* 54, 79. *Anslow's Case.*

Debt on Obligation, conditioned for performance of Covenants in *quadam Indentura, hic in Curia prolat'*, and in truth the Deed was not indented, adjudged *pro Quer.* *Cro.El.* 472. *Frampton and Stiles*, 5 *Rep.* 20. *b.*

In *Barnstable.* Debt on Obligation to perform Articles ; the Defendant pleads performance ; this Bar is ill, not setting forth the Indenture (below.) The Plaintiff alledges non-payment to *J. S. secundum formam Articulorum* : *Per Cur.* the general Replication is well enough, without setting forth the Indenture ; but the Plaintiff by alledging the Breach hath waved the ill Bar, 3 *Keb.* 605. *Lee and Pigsty.*

In Debt on Bond conditioned for performance of Covenants in an Indenture ; the Defendant pleads performance generally ; this is not good unless he shew the Deed, and plead this : And it is

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is not sufficient to shew the Deed, when the Plaintiff replies, and prays Oyer, because the Plea of the Defendant ought to be special, if any of the Covenants are in the negative; and it doth not appear to the Court whether the Covenants are negative or affirmative, until the Deed be shewed; if the Party who will plead the Deed, had it not, he ought to move the Court for to have the Deed or a Copy, *Siderfin* p. 50.97. *Lewes and Ball.*

Vide plus postea Tit. Oyer.

The Defendant pleads there are no Covenants; *Per Cur.* this being general of all, is well; *cont.* if it were to perform any certain Covenant, but the Party is estopt to say there is no Indenture, 1 *Keble* 381. *Brazier and Aston. Mod. Rep. in Holloways Case*; yet 2 *Keble* 564. *Smith and Yeomans, cont.* but that was because of the shifting way of pleading.

The Condition was, Whereas *J. S.* claimed to have a Lease for years of *D.* granted to him by *W.* if the said Defendant keep without damage the Plaintiff from all claims, &c. the Defendant pleads the said *J. S.* had not any such Lease; *per Cur.* he is estopt to say so by the recital.

A Condition to perform Covenants, The Defendant pleads the Indenture of *W. S.* and *A.* his Wife, whereas in truth his Wife never sealed it; the Plaintiff replies, The Indenture shewn by the Defendant *non fuit. fuit inter W. S. and Ann* his Wife of the one part, and the Plaintiff on the other; and Issue; the Jury found, the Husband only sealed; *Per Cur.* this Verdict is found against the Defendant, the Plaintiff is not estopt

estopt to say that the Deed shewn, is not the Deed of the Baron and Ferne; but he is estopt by the Condition to say that there is not any such indenture, *Cro. Eliz.* p. 796. *Ship and Steed.*

Release Pleased.

If before the breach of any of the Covenants, the Obligee releaseth the Covenants, and afterwards one of the Covenants is broken, the Obligation is not forfeited; for there is not now any Covenant which may be broken, and so the Obligation is discharged; but if the Release had been made after the Covenant broken, *aliter*, 3 *Leon.* 69.

What is confessed by pleading Conditions performed.

Obligation to perform Covenants; the Covenant was, If the Plaintiff pay the Defendant 100 l. at *Michaelmas*, that the Defendant would pay him yearly after 10 l. for his life, and averred he did not pay him 10 l. yearly, but did not mention the payment of 100 l. by him, which was assigned for Error; *Per Cur.* its no Error, because the Defendant by pleading Conditions performed, had confessed the payment of the 100 l. to him by the Plaintiff, *Moor n.* 474. *Goodwin and Isham.*

If the substance be answered, though not the very words; its good; as the Condition was, if he perform all the Covenants, Conditions, Agreements and Articles, and when the Defendant cited them in his Plea, which are all the Covenants, Conditions, Agreements, and leaves out (Articles) and so hath not pleaded performance of the Condition; but *per Cur.* Agreements is all one

one with Articles, and if many words contain one thing in signification; if he answer to them in substance, its good; and the Condition was, If the Defendant and *T.* and their Assigns perform, &c. and he pleads he and *T.* had performed, but saith not, he and *T.* and their Assignees had performed, &c. and it may be they had assigned it over; but *per Cur.* it appeareth not there is any Assignee, and it shall not be intended, except it be specially shewn, and a Bar is good to common intent, *Cro. Eliz. p. 255. Emot and Cole.*

Where an Act is to be done according to a Covenant, he who pleads the performance of it, ought to plead it specially; but where no Act is to be done, but only a permittance, *permisit* is a good Plea; one Covenant was, That the Plaintiff to such of the said Lands as by the Custom of the Country *tunc jacebant frisca* should have free ingress, &c. at his pleasure; the Defendant pleads, *quod permisit D. quarentem habere intrationem & exitum, &c. in tales terras quales tunc jacebant frisca secundum consuetudinem patrie*, he need not shew in certain what Lands did lie fresh, and it shall come on the Plaintiffs part to shew in what Lands the Defendant *non permisit*, *1 Leon. p. 136. Lisleton and Perne.*

The Defendant is not bound to plead performance of any more than his own Grants and Covenants, *vid. Dyer 26 H. 8. 27. b.*

One Covenant with *J. S.* that he shall enjoy the Land; and farther, that *A.* a Farmer of the Tithes shall pay 8 *l. per annum*, and is bound to performance; in Debt on Bond, its good to plead performance of the Covenants, *ex parte sua perimplend.*

implend. for this implies the Farmer had paid the 8 l. and exprefs mention of that needs not be, *Dyer 23 El. 372, 373.*

In Debt for *non-performance* of Covenants, the Plaintiff ought to shew how the Covenants are broken; and if it be in *non-payment* of Rent, he ought to shew in certain, what day the Rent was arrear, 9 H. 6, 18.

Debt to perform Covenants; one was, to marry the Plaintiffs Daughter before such a day. 2. That Sir E. S. and his Wife should levy a Fine of such Lands, &c. 3. Whereas he granted a Lease of, &c. to S. that he had not made any former Grant, nor would afterwards make any Grant thereof, without the Plaintiffs assent; the Defendant *quoad* the last Covenant in the negative pleaded, that he had not made any former Grant of the Lease, nor had made any Grant after the Obligation, without the Plaintiffs assent. *Et quoad omnes alias conventiones*, that he had performed them; the Plaintiff demurs. 1. Because the Covenant to levy a Fine is an Act to be performed by a Stranger, and to be performed on Record; and its not sufficient to plead general performance. 2. Because the Covenant being in the disjunctive, he ought to shew specially which of them, and not generally. 3. He pleaded, he did not grant without the Plaintiffs assent, which is *negativa pro-nans*; *Per Cur.* for these Causes the Plea not good, *Cro. Jac. 560. Lee and Luishil.*

Issue, Trial.

COvenants in a Lease of an House ; the Defendant pleads he was an Alien, born at *Paris in France*, and an Artificer ; and so by 32 H. 8. 16. the Lease void ; the Plaintiff replies, The Defendant was not an Alien and Artificer ; the Defendant demurs : *Per Cur.* Alien and Artificer are but the same Person, and but one Breach. 2. This Issue cannot be tried, because the Replication should have been, that he was a Denizen born at *Issington in England*, and that he is no Alien generally, 2 *Keble* 315. *Freeman* and *King* 98.

On performance generally pleaded, the Plaintiff may reply with particular Breach, & *hoc paratus*, &c. and leave the Issue to the Defendant ; *contra* on Condition to pay Money at several days ; the Defendant pleads particular payment ; the Plaintiff replies, he did not pay such a day certain, & *hoc paratus*, &c. its ill, 1 *Keble* 759. *Charleton* and *Fine*.

The Defendant pleads Covenants performed ; the Plaintiff assigns a Breach in not delivering up an House ; the Defendant rejoins, before the end of the Term the Plaintiff gave him leave to continue it longer : *Per Cur.* its a departure, the parol Agreement was pleaded in Bar, 1 *Keb.* 678. *Brooks* and *Lake*.

The Defendant pleads the Obligation was for performance of Covenants, and shews what, and alledgeth farther, that in the said Indenture is a Proviso, *si aliqua lrs vel controversia oriatur im-*
posterum

posterum by reason of any clause, that then before any Suit thereon, the Parties should choose four indifferent Persons for the ending thereof, which being done, the Obligation to be void, and *in facto* saith, that Controversy did arise, the Plaintiff demurs; *per Cur.* because the Defendant hath not shewed what strife, and what clause, the Bar is not good, for it extends not to every Covenant, only where strife ariseth, 1 Leon. 37. *Parmort and Griffin.*

A Condition for performance, and sets forth the Covenant, and shewed farther, that the Plaintiff after sealing procured *J. S.* to rase the Indenture, and shews wherein, and so the Indenture became void: *Per Cur.* its against the Defendant, the Rasure not being in a place material, and the Rasure trencheth to the advantage of himself who pleads it; and if the Indenture had become void by the Rasure, the Bond had been single, 1 Leon. p. 282. The Lord *Darcy* and *Sharps Case.*

A Condition to perform Covenants; one was, To give an account just and true (being a Brewers Clark,) the Defendant pleads performance; the Plaintiff replies, by receipt of 30*l.* The Defendant rejoins, that it was stolen out of the Plaintiffs Counting-house; the Plaintiff demurred; the Robbery is a good Bar; but the Plaintiff *per Cur.* discontinued, because a Rule for Trial of the Robbery was disobeyed, 2 Keble 761, 779, 830. *Vere and Smith.*

A Condition to perform Covenants; one was not to take a new Lease without assent of the Plaintiff; the Defendant pleads he took no new Lease

contin

contra formam Indentur. The Plaintiff replies, he did take a new Lease, but saith not without assent of the Plaintiff; the Defendant demurs; *per Cur.* the Replication is good; for the Plaintiff is missed by the Defendant, and the Issue is good enough. 3 Keble 524. Perry and Whitby.

A Condition to perform things for which he was bound in a Recognizance; the Defendant pleads specially, that he acknowledged a thing in nature of a Recognizance, but upon special matter it appeared to the Court it was not any Recognizance; *male*, for it amounts to the general Issue, 1 Rolls Rep. 83. Fletcher and Farrer.

A Condition to pay unto the Plaintiff all such Legacies which he had given to him when he should come of his full Age, &c. The Defendant pleads he paid *omnia talia Legata qualia ad tale tempus* generally, without shewing the particulars, and time when, and so the Plea not good, 1 Bulst. p. 43. Stone and Bliss.

To do or permit other Acts; to save harmless.

A Condition for saving the Plaintiff harmless from all Legacies; and shews for Breach, there was a Suit commenced against him in Chancery for a Legacy; *Per Cur.* this Declaration is not good, because he doth not shew such a Legacy was devised, or that he was chargable with it. 2. Because he doth not shew any place where Chancery was; in all Cases where a Man pleads any thing out of Chancery, or any thing to be done in Chancery, he ought in pleading to shew the same certainly, and to say *in Canc. apud Westm.* other-

otherwise upon Issue no Venue can arise, 2 *Bulst.* 19. *Dowry and Fawn. Telv.* 226. *id. Case.* 1 *Brownl.* 117. *id. Case. vid.* 1 *Rolls Abr.* 430.

A Condition, if he save harmless and indemnify the Plaintiff and his Lands in Sale from an annual Rent of such a Lease during the said Term; the Defendant pleads *quod a tempore confectum script. obligation. hucusq; exoneravit & indemnem conservavit* the Plaintiff and all his said Lands from the said Rent, *Et hoc, &c.* Plaintiff demurs, he ought to shew *quomodo exoneravit*, it being a Plea in the affirmative; had he pleaded *non dampnificavit*, it had been good, *Cro. Jac.* 634: *Horseman and Obbins, Winch.*

To save harmless from Incumbrances, *vide antea.*

A Condition to save harmless from such a Bayl in such an Action; the Defendant pleads *quod libere & absolute exoneravit*; &c. and shews not how he had discharged him, and therefore ill; *aliter* if he had pleaded *non dampnificatus*, *Cro. Jac.* p. 363: *Codner and Dalby.* 2 *Bulst.* 270.

A Condition to save the Plaintiff harmless against *J. Roberts* of one Obligation; the Defendant pleads *non dampnificatus*; the Plaintiff replies, that *J. R.* had sued him to the Exigent, and then he appeared, and *R.* had Judgment against him, & *essint dampnificat.* the Defendant rejoins, that he had retained *Attorn. pro* Plaintiff, and the Plaintiff was at no Expences, nor was arrested, nor Lands or Goods seized, and that after Judgment he was not dampnified; the Plaintiff demurs; *Cur. pro Quer.* for immediately upon the Judgment given he was dampnified, for all
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are liable to execution; and if the Defendant after Judgment had paid the Debt, it would not serve, for he was dampnified before, *Cro. El. p. 264. Bush and Ridgely*

Act. port by High-Sheriff *versus* Under-Sheriff; The Defendant pleaded he saved him harmless; the Plaintiff demurs; *male Plea*, for he may save him harmless in many things, and yet the Plaintiff may be dampnified in some other; he ought to have pleaded *non dampnificatus*, *Stiles p. 23. Car. 1. fol. 16. Wroth and Elsey*, that he saved harmless, and shews not how, *Cro. Jac. 165. Alingtons Case.*

The Defendant pleads *non dampnificatus*; the Plaintiff replies, and shews a Breach on the Defendants part, wherein he was dampnified; the Defendant demurs, because the Breach was assigned to be at *Westminster*, and doth not shew in what County *Westminster* is, and good, *Stiles p. 142. M. 24 Car. B. R. Nelson versus Tompson.*

A Bailiff conditions to save the Under-Sheriff harmless in executing Process, &c. and assigns a Breach that the Bailiff had not executed his Warrant upon Process directed out of the Exchequer to levy Issues on Lands in the Mannor of A. but he doth alledge that the Mannor is within the Hundred where he is Bailiff, *quod oportuit*, and a good exception; for a Bailiff cannot execute a Precept out of his Hundred, *Stiles p. 18. Pasch. 23. Car. 2. Stoughton and Day. Allen p. 10. id. Case.*

(being then in execution at the Plaintiffs suit) The

10. The Condition of a Bond to save the Oblige harmless concerning his buying of certain Goods at such a price, extends not to the Price but to the Title, *Allen p. 95.*

11. A Condition to save the Plaintiff and Inhabitants of N. harmless from all Charges that may happen by plating A. in a Cottage; the Defendant pleads *non dampnificatus*; the Plaintiff replies, they were forced to provide Necessaries by reason of a Rate set on the Inhabitants by Justices and Overseers, good, without shewing any particular Inhabitant was charged; the possibility that they may be charged by the Rule, is a sufficient dampnification, 1 *Keble 392. Tavernor and Quarman.*

12. A Condition to save harmless from all Damage that may happen by non-payment of Legacies, being Executor of J. S. the Plaintiff alledgeth damage in Suit by Legatee in Chancery; the Defendant demurs, Judgment *pro Quer.* 1 *Keble Hil. 14, 15 Car. 2. p. 464. Gibs and Tailor.*

13. A Condition to save harmless of being Bail for an appearance; the Defendant pleads *non dampnificatus* on Oyer; the Plaintiff replies, the Defendant did not appear, *per quod* the Sheriff did prosecute him *per debitu[m] legis cursum*; here being a Suit alledged is a sufficient Breach, *per Twissden, Q. 2 Keble fol. 625. Pas. 32 Car. 2. Baker and Porter.*

14. A Condition was to save the Plaintiff harmless from all Actions and Damages that might arise upon the release of the Defendant out of Execution (being then in execution at the Plaintiffs Suit) from all Persons that might trouble him concerning

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ing the said Release: the Case was, The Plaintiff sued N. in the Court at R. for 100 l. the Defendant and one H. became Bail; the Plaintiff had Judgment against N. and also the Bail; the Defendant was thereupon taken in Execution; but before the Defendant was taken in Execution, H. the other Bail gave him Security for the Mony, and in consideration thereof, the Plaintiff promiſeth H. that he might take out Execution against the other Defendant, and that he would not release him without the consent of H. whereupon H. procured him to be taken in Execution, and he then moved the Plaintiff to discharge him, who acquainted him with the promise made to H. *in ſupra*, thereupon the Defendant made him this Bond, and conditioned *proit*, ſo he diſcharged him, and H. brought an Action upon the Promise and recovered 150 l. damage; and ſo *dammificat*. the Defendant demurred; Judgment *pro Quer.* this is a Breach, for by the word (damages) is not only intended damages which ariſe directly by the Release, but to any other collateral Act *dehors*, as is this promise, *Hob. p. 269. Wilden and Wilkinſon. 1 Rolls Abr. 431. id. Caſes vid. 1 Rolls Abr. 422. id. Caſe.*

Condition is to perform an Award, which was, That the Obligee *ſtaret acquietatus de qualibet materia* contained in a Bill in Chancery, which the Obligor had depending againſt him, and that the ſaid Suit ſhall ceaſe; and after the Obligor exhibits a new Bill in Chancery againſt the Obligee for the ſame matter, and in the end of the Bill prays Proceſs, but never takes out Proceſs thereon againſt him; this is not any ſuch mole-

station as shall be a forfeiture of the Condition; for he is not at any damage by this, *P. 12 Jac. 1 Rolls Abr. 432. Freeman and Sbeen.*

A. and *B.* are bound in an Obligation to perform certain Covenants contained in an Indenture; and one is to pay Money; and *C.* covenants with *A.* and *B.* to save them harmless of all things contained in the same Indenture; and after the Money is not paid according to the Indenture, by which the Obligation is forfeited, yet *C.* is not bound to save them harmless of the Obligation, for this is a collateral thing to the Indenture, *M. 5 Jac. 1 Rolls Abr. 432. Scot and Pope versus Griffin.*

A Condition recites, That the Plaintiff at the request of the Testator was bound in 2000 *l.* to the Commissioners of the Excise; and if the Testator acquit and discharge, or sufficiently save harmless from all Suits, Troubles, &c. concerning the said Bond, then, &c. the Defendant saith there were no Suits; the Plaintiff replies, there was a *Sc. Fac.* out of the Exchequer, and he was forced to retain an Attorney, and give him 3 *s.* 4 *d.* the Defendant demurs, because no notice of the Suit is given to the Defendant: *per Cur.* there needs no notice, 2 *Keb.* 529, 609, 642. *King and Atkins, Cro. El.* 613. *Fox and Wright.*

The Defendant is Security to the Plaintiff for payment of Money as separate Maintenance to *Williamson's* Wife; the Breach assigned, is, that *Williamson* brought an *Action sur Case* against the Plaintiff, on his promise to pay so much, if the Defendant now, who was then Plaintiff, would remit the rest: Its a Cheat, and the Defendant is

not

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not bound to secure the Plaintiff, 2 *Keble* p. 106. *Campion* versus *Skipwith*.

Counter-bond writ in a Book and good, *Cro. El.* p. 613. *Fox* and *Wright*.

If the Condition be to save harmless from such a thing, this doth not extend to Actions in which he might have lawful defence without the Obligor, 2 *H.* 4. 9.

A Condition to save harmless from *J. S.* if *J. S.* after saith to him, that if he will go to his House he will beat him, by which menace he dares not go to his House about his Business, the Obligation is forfeited, 18 *Ed.* 4. 28.

To plead he had saved the Plaintiff harmless, and not to shew how, is ill, *Stiles* p. 219. *Sbertliff* vers. *Timberly*. *Allen* 72. *Ellis* and *Box*. If it be that from time to time he hath saved him harmless, its well enough, *Stiles* p. 353. *M.* 1652. *Bond* and *Martin*. But in Condition to save harmless from Escapes; the Defendant pleads he had saved harmless, but saith not how; and the Plaintiff demurs generally; *Per Cur.* its ill on special demurrer, but aided by general demurrer, 2 *Keble* 625. *Henshaw* and *Warren*. 3 *Keble* 198. *Fletcher* and *White*.

To discharge and save harmless. *Qu.* if any difference on *Mansers Case*, 1 *Keble* 379. *Morgan* and *Thomas*.

In such Cases the Plaintiff ought to plead *non damnificat.* for that he hath saved him harmless, doth imply he was damnified, *Ibid.*

A Condition was to save the Obligor harmless of a *Nomine pænæ* against *M.* To plead he had saved him harmless, and not to shew how, is not

good; had he pleaded *non damnificatus* in the negative, it had been good, *Winch. p. 9.*

A Condition to keep a Parish harmless from a Bastard Child; the Defendant pleads he had saved the Parish harmless, but shews not how; the Plaintiff replied, That the Parish was warned before the Justices of the Peace at the Sessions, and was there ordered by Record to pay so much for the keeping of the Child; the Defendant pleads, *nul tiel Record*; the Plaintiff demurs.

1. The Plea of *nul tiel Record* is a good Plea, because an Order of Sessions of Peace is a Record. 2. Judgment *pro Quer.* because the Defendants Bar is ill, in that he hath pleaded in the affirmative, and shews not how. *Non damnificatus* had been good; and it is not helped by demurrer, it being matter of substance, *March. 121. n. 2bo. Anonymus.*

A Condition to save harmless from all Obligations which he had entred into for him; the Defendant pleads, *quod exoneravit & indemnum conservavit* from all the Obligations, and shews not from what, and yet good, because there might be many, and so to avoid perplexity of pleading; and because he pleaded not *quomodo exoneravit*, but generally, the Plea was ill, *Cro. El. p. 916. Braban and Bacon.*

A Condition to save the Parish harmless of a Bastard Child, (*vide the Form,*) the Defendant pleads, *non damnificatus*; the Plaintiff replies, That the Defendant nor any other, for the space of a month, provided for the Child, wherefore the Parish paid 40 s. for its Maintenance; the Defendant rejoins, he offered to maintain the Child at

his

his own Charge, and the Parith refused to permit him, *Et hoc paratus, &c.* this rejoinder is ill, because it is a departure, for he ought to have pleaded this first in his Plea; 2 Sanders 84. Siderfin p. 444. 2 Keble 219. Mod. Rep. 45. Richards and Hodges.

Counter-Bonds, Sureties.

IF the Condition be to discharge another against J. S. of an Obligation wherein he is bound, he ought to discharge him of the Obligation by Release, or otherwise; and it is not sufficient to save him harmless, 22 Ed. 4. 40. b.

The Defendant pleads *non damnificatus*; the Plaintiff replies, the Mony was not paid at the day, *per quod* the Plaintiff became *onerabilis*, and durst not go about his Affairs; the Defendant rejoins, that the Mony was tendered and refused, *absq; hoc*, that the Plaintiff was chargeable; the Plaintiff demurs, here need not be alledged any special damage; but the saying he could not attend his Business is sufficient; Judgment *pro Quer.* 3 Keble p. 336. Trin. 26 Car. 2 B. R. Young and White.

A Condition to acquit, discharge, or otherwise save harmless of 20 Bonds entred into by the Plaintiff with the Defendant; and of all Suits and Troubles which may happen thereupon; after Oyer the Defendant pleads performance; the Plaintiff replied, he was sued, and forced to retain an Attorney, and that the Defendant *licet sapius requisitus* had not acquitted him; the Defendant demurs, because the Plaintiff had not alledged par-

ticular notice to him of the Suit ; *Per Cur.* he is not bound to give special notice, *Siderfin* p. 442. *H. 21 Car. 2. King and Atkins.*

An Obligation made by *J. S. & ad majorem rei securitatem inveni J. D. fidejussorem*, and *J. D.* put his Seal to it ; this was his Deed, *Cro. P. 29. Eliz. B. R. Skidmore versus Van Stevan.*

One is bound with another as his Surety, jointly and severally, they are both principals, and neither Pledge nor Fidejussor for the other ; and one cannot have the Writ *de plegiis acquietandis* against the other ; for this lies not but where one is named expressly as Surety in the Bond, *Hob. 53. in Foster and Jacksons Case, Dyer 370.*

B. was bound with *K.* for the payment of 200 *l.* to *A. B.* The Condition was, If *K.* shall save harmless *B.* of all Suits, Quarrels and Demands, touching and concerning the said Bond of 200 *l.* then, &c. *B.* came to the place of payment at the day, and perceiving no Person there present to pay the 100 *l.* for *K.* he to save the penalty of his Bond, paid the 100 *l.* to *A. B.* and so brought this Action upon the Counter-bond ; and upon *non damnificatus* pleaded, the Plaintiff replied, and shewed all the special matter ; the Defendant demurred ; adjudged *pro Quer.* for it was harm to him, and its not needful for the Plaintiff to be arrested or sued. And this Plea of *non damnificatus* implied, that the Defendant had saved him harmless as by Release, payment, or otherwise. Terror of Suit so that he dares not go about his Business, is damnification, though he be not arrested by Process, *5 Rep. 24. Broughtons Case.*

Case. Capias issued out against a Surety, is a damnification, 2 *Bulst.* 105. *Reve versus Harris.*

The Custom of London is, if many are bound as Sureties, if the principal fail of payment, and one of the Sureties be sued upon the Obligation, he may have a Writ *de Contributione facienda* against the other Sureties; such a Writ was brought in London, and removed in B. R. but it was remanded, *Moor n. 266* & *Leon. p. 166, 167.* *Offly and Johnson, The Book of Entries, 160.*

One Surety may pay the Money and have the Bond decreed to him in Chancery to make his advantage, *Latch 170. Dawson's Case.*

The Surety cannot plead that the principal was kept in Duresse, till he and the Defendant entered into the Bond, though the principal might plead it; for none shall avoid his own Bond for the imprisonment or danger of any other than himself only, *Crook M. 5 Jac. fo. 187. Huscomb and Standing, 1 Brownl. p. 64. Mantel and Gibbs.*

The Defendant in a Counterbond pleads, that the Bond to J. S. (wherein the Plaintiff was bound with him as Surety) was upon usurious Contract, and pleads the Statute *Q. issim non damnificatio*, no Plea; for he ought to save his Surety harmless, and it shall not be intended that the Surety knew of the usurious Contract, *Crook Eliz. p. 588. Robinson and May p. 643. Boulton and Downham, Nov p. 73. 3 Leon. 63. Potkin's Case, 2 Leon. 166. Bassett and Prower.* The Statute saith, *All Bonds and collateral Assurances made for the Payment of Money lent upon Usury, shall be utterly void.* Counter-Bond here was not for the payment

ment of the Money lent, but for the Indemnity of the Surety.

A Condition to save harmless in a Counter-Bond. The Defendant paid not the Money at the day, this is a present Forfeiture of the Counter-Bond, for he hath put the Plaintiff in danger of being arrested, and it is a present damage. 3 Bulstr. p. 233. *Abbots and Johnson*, 10 E. 4. 27, 28.

The Defendant pleads, he had saved the Plaintiff harmless. The Plaintiff replied that the Money was not paid, and Process went out against him. The Plaintiff rejoins, he had not any notice of the Damnification. No good Rejoinder. 1. The Defendant himself ought to take notice of the Act of a Stranger. 2. It is a departure from the Bar, 1 *Sanders* 117. *Cutler and Southern*, *Vid. the Pleadings*.

If a Man be bound to preserve his Surety sans damage of an Obligation, if he suffer the Obligation to be forfeited, yet this is not any Damnification, and by this the Counter-Bond is not forfeited, cited in *Freeman and Sheens Case*, 1 *Rolls Rep.* p. 7. *Qu. de quo*.

The Defendant pleads, that J. S. (the Creditor) sued the Plaintiff on the Bond, and had Judgment; but before Execution he delivered the Money to the Plaintiff to satisfy it; no Plea; for by the Judgment the party is damnified, and the Costs are not paid, *Crook Eliz.* p. 396. *Botbwright and Harvey*, 1 *Rolls Abr.* 432. *Id. Case*.

The Defendant pleads, that at the day of payment he was going *ad solvend.* and that the Plaintiff by Covin betwixt him and another Stranger caused the Defendant to be imprisoned until after

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Sun-set, it is an ill Surmise and no Bar, *Crook Eliz.*
672. *Morris and Lusterel*.

The Plaintiff declares, that at the Request of the Defendant he became bound with a third person to pay Mony to J.S. at a day; and the Defendant became bound to the Plaintiff with Condition that if the Defendant did pay the Mony to J.S. at the day for which the Plaintiff was bound, and in the mean time should save him harmless, then, &c. The Defendant pleads, he caused the party with whom the Plaintiff was bound to submit himself to prison, and that the Plaintiff was not damnified. The Plaintiff denies not the Bar, but says that a *Latitat* was sued out against him, and so scared. The Defendant demurs; the Plea is ill, and the other hath alledged an ill Breach; he saith not he took a *Lat. prout patet per Record*; the words (in the mean time) refer to the last words of the Condition. Judgment *pro Def.* *Stiles p. 356. Young and Petit.*

Mony prayed out of the Coroners hands by one who had paid the Debt as Surety, *12 Keb. 400. Fester and Clafon.*

A Condition, whereas the Plaintiff was obliged in such Obligations for the Defendant, that if he were charged or molested in his Body or Goods for those Obligations, he would within a Month satisfy him for it. The Defendant saith, he hath paid him such a Sum for all his Charges within a Month, no Plea; for he ought to shew how the Plaintiff was molested, and that he had satisfied so much, or that was not molested, *Crook Eliz. p. 393. Hutchinson and Lawson.*

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The Condition is if R. C. acquit R. F. and J. B. of such Sureties they have made to N. that then, &c. pleaded that R. F. and J. B. were bound to N. in 15 l. and R. C. did procure Acquittances of N. to R. F. and J. B. for the same: See the form of pleading: *Quare* if good Plea, 1 H. 7. 30. a.

The Condition was to secure him harmless against J. S. in an Action for 53 l. for which he was Bail for him. The Defendant pleads he had paid to J. S. 20 l. in satisfaction of the 53 l. and so kept him harmless; but for that the Plaintiff might be damnified before the payment, to which he doth not answer, the Plea is ill, *Crook Eliz. p. 156. Davies and Thomas.*

In Debt on a Counter-bond for Security of Bail given for appearance of the Defendant. The Defendant pleads *non damnificatus*. The Plaintiff replied *Non comparuit*. The Defendant rejoyns, that the first Bond given was void per 23 H. 6. and that there was no *Latitat* issued forth; per *Cur.* this is a departure. But notwithstanding the Bond the party is not estopped to say there was no *Latitat*; but the Non-appearance is a damnification, be the Bond void or not, 1 Keb. 59, 98. *Cook and Morgan.*

Condition to permit.

WHere no Act is to be done, but only a Permittance, he need not plead it specially; and *non permisit* or *permisit* is a good Plea. A Covenant, that the Plaintiff to such of the said Lands, as by the Custom of the Country *tunc jacebant frisca*, should have free ingress, &c. The

The Defendant pleads, *quod permisit Querentem intrare, &c. in sales terras quales tunc jacebant frisco secundum consuetud. patrie*; he need not shew what Lands did lie fresh, 1 Leon. p. 136. Littleton and Perne.

L. covenants with S. that he would suffer him and his Assigns to have free ingress, &c. into his House and Shop without let or interruption of the said L. and that S. *appunctuavit* one T. *ut servientem suum in Messuag. &c. intrare in usum de S. super quo predict. T. intravit, & predictus L. expulit.* Moved in Arrest. 1. It is alledged L. expels the Servant, and this was the expulsion of the Master. 2. *Appunctuavit intrare,* and doth not say what time, for perhaps his Licence to enter might be determined. 3. It is not said at what time he entred, but *super quo intravit*; all these Exceptions were over-ruled, 2 Rolls Rep. 78. Snelling and Lowe.

The Condition was, if A. (a Stranger) would render himself to an Arrest in such a place. The Defendant pleads A. was a Servant to a Parliament-Man and pleads Priviledge. The Plaintiff demurs. *Pro Quer.* for A. might render himself, and let it be at their peril, if they will arrest him, 1 Brownl. Rep. 91. Jackson and Kirton.

A Condition to perform all Covenants in a Lease made by her Husband of a Warren; one whereof was to do no Act to disturb the Lessee; she after marries another Husband, who entred on the Plaintiff and cut his Nets, no Title being shewed by which he entred; The Plaintiff demurred, and Judgment *pro Quer.* It is not requisite that the Husband be Assignee of the Estate, but

but her Assignee of Contract, which she might have avoided, the Husband acts in her Right, 1 *Keb.* 348, 512. *Hall versus Creswel & Uxor.*

One is bound to permit his Tenants to use the Common, and that he shall not alter the Course of the Common, *quod permisit*, and that he shall not alter, &c. is a good Plea generally, 11 *Eliz.* *Dyer* 279.

Condition to surrender Copyhold Lands.

THE Condition was, that the Obligor should surrender his Copyhold Land to the use of the Obligee; he pleaded, he had surrendred it; ill Plea, because he had not shewed when the Court of the Lord was holden, *Winch* p. 11. *Llewellyns Case.*

The Condition reciting whereas such Copyhold Lands were to be surrendred by *A. S.* at her full age, to the use of the said *Hammond* and *Gay* and their Heirs, and that *Gay* should pay to *Hammond* 33 *l.* at such a day, and if he failed it should be to the use of *Hammond* and his Heirs. It was conditioned, that if the Obligor procured the said *A. S.* at her full age to surrender to the use of *Hammond* and his Heirs, and if *Hammond* and his Heirs might have and enjoy the said Lands to him and his Heirs, then the Obligation, &c. The Defendant pleads *Gay* paid not the 33 *l.* and that *A. S.* came of full age such a day, and afterwards at such a Court in full Court did surrender, release and quit claim to the Plaintiff, being in possession, all her Estate, Right and Interest in the same Tenements, and that the Plaintiff always after might have

To satisfy Imbeziled Goods.

ONe was bound to satisfy for Goods he had imbeziled; he pleads that upon suit for those Goods, he was taken in Execution for the damage. No Plea 33 *H. b* 47. *Hillaries Case, Hob. p. 59.*

The Condition, if *A.* turned over Apprentice should waste the Goods of his Master, to pay what the Master was damnified; no damage pleaded. Plaintiff sets forth goods wasted, but sets forth no notice given to the Defendant; no notice is necessary; when any one undertakes for a third person, he must answer for him at his peril, because the imbezilment is not in the Confidence of the Plaintiff, and the particulars of the Goods wasted need not be set forth. 1 *Keb.* 467. 471. *French and Peirce.*

To enjoy Office.

A Condition, Whereas the Plaintiff and Defendant be now jointly seised of the Office of the Registry of the Court of Admiralty: if the Defendant shall permit the Plaintiff to use the said Office, and take the profits of it to his own use during his Life, without let or interruption done by him, then, &c. the Defendant pleads, That the Custom of the Realm of *England* is, that the Lord Admiral might grant the said Office during his own Life; and the Lord *Clynton* did grant it to the Plaintiff and Defendant, and dyed: and the Lord *Howard* granted to *Wade*, who ousted him;

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him; before which time the Defendant suffered the Plaintiff to enjoy the said Office, and to take the Profits; the Plaintiff demurs; *male plea*, for if it be the custom of *England*, then its common Law, and this cannot be tryed, for no Venue can be from the Realm of *England*; also he doth not answer to any time after the grant of Admiral *Howard*; for though *Wade* might lawfully put him out, yet the Defendant could not, 2 *Leon.* 114. *Parker and Harrold.*

Condition, if the Plaintiff had possessed and enjoyed the Office of Eadleship, &c. that then, &c. Defendant pleads, *quod habuit gavisus fuit & occupavit*, &c. Jury find the Plaintiff did exercise and occupy that Office, but whether that shall be said having and enjoying, they doubted. *Per Cur.* diversity between an Office in verity and an Office in reputation; for of Office in reputation there can be no other possession but by occupation, for it is no Office in Interest, as Office of Marshal, of Justice of Assize, *Cro. Eliz.* p. 382. *Dudly and Kingon.*

To procure an Office, Place, Benefice

THe Condition was, if *S.* procure a Grant of the next Avoydance of the Arch-Deaconry of *Staff.* to be made to the said *Bingham*, so that the said *Bingham* to such next Avoydance may present, that then, &c. the Case was, by the means of *S.* the Grant of the said next Avoydance was made to *Bingham*, but before the next Avoydance, the present Arch-Deacon was made Bishop, so as the Prebendment to the next Avoydance appertained to the Queen; *Per Cur.* the Condition was not perform-

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and that by reason of these words (so that Bingham may present) 13 Leon. 131. Bingham and Squire.

Condition, if the Defendant do not lawfully procure a Market to be granted within six Months of a return of an *ad quod damnum* to be sued out for that purpose, that then if the Obligor pay 20 l. to the Oblige, then it was returned to be *ad damnum*, and so no Market procured: Oblige shall recover the 20 l. *Rationem*, vide 2 Rolls Rep. 467.

June and March.

Conditions concerning Writings } to procure.
} to deliver.
} to execute.
} to make.

IF a Man bind himself to procure a Stranger to make a Release of all his Right and Title to Land, the Obligor must procure him to make such a Release *de facto*, though he had no right. 1 Sanders 216. Doughty and Neal. Vide there the Form of the Condition and the Pleadings.

A Condition if J. S. make Obligation to the Plaintiff before Michaelmas, that then, &c. the Defendant pleads J. S. made the Obligation, and sealed it and delivered it to another as his Deed, to the Use of the Plaintiff; *Per Cur.* its no performance, for perhaps the other will not deliver it to the Plaintiff, *Croc. Eliz.* p. 143. Bease and Draycot.

Condition to pay 100 l. to the Plaintiff when he shall take a sufficient discharge from A. and B. for the payment of Legacies: an Acquittance from

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one by the others consent is no sufficient discharge,
1 Rob. 739. Forquer and Frazier.

Condition that the Daughters when they come to full Age shall give Releases, it shall be taken distributively. *2 Keb. 591. Bosvilles Case.*

Condition to give such a Release and Discharge from and against him and his Heirs, for receipt of a hundred Marks, as by the Judge of the Prerogative Court of Canterbury shall be thought meet: the Defendant pleads the Judge did not appoint any release or discharge, &c. no Plea, for it should be alledged he caused a Release to be drawn, and tendered to the Judge to be allowed of, for it is on his part in discharge of his Obligation, to draw such a Release as the Judge shall allow: *Cro. Eliz. p. 716. Lamb and Brownwent, 5 Rep. 23. b.* The Judge is a stranger to the Condition, and he hath taken it upon him to do it at his peril; he ought to procure the Judge to direct it: *Lamb's Case.*

A Condition, if Obligor deliver to the Plaintiff an Obligation in which he was bound to the Defendant before such a day, that then, &c. the Defendant sueth the Plaintiff upon the Obligation and recovereth, and afterwards and before the day he delivers it to him; this is no performance; though the words were performed, yet the intent was not; for the intent was, he should have the Obligation for his discharge, which is not by the delivery, for *transit in rem judicatam*, and he may have the benefit of the judgment, *Cro. Eliz. p. 7. Teales Case.*

If a man not Lettered be bound to make a Deed, he is not bound to seal and deliver any

Writing which shall be tendred to him, unless there be some body present that may read this to him, or expound it if he request it, 2 Rep. 3. *Manners Case.*

The Condition was, to seal and execute a Release to the Plaintiff. The Defendant demurs, because the Plaintiff in his Declaration did not alledge a Tender, the Condition not being to make, but to seal and execute. *Per Cur.* he is bound to do it without a tender, *Mod. Rep.* 104. *Baker and Bulstrode.*

Condition was, That the Obligor shall deliver all Writings concerning such Land; its a good Plea to say generally, that he had delivered all the Writings, 28 H. 8. *Dyer* 28. 4 H. 7. 12.

Condition to enfeof the Obligor of certain Lands, at such a day and place. Pleaded that the Defendant was present there all the day to enfeof the Plaintiff, and that the Plaintiff came not there to accept of this: Plaintiff replies, he was there present all the day to accept the enfeofment, without that that the Defendant was there; its a good Replication, *Dock. pl.* 323. 22. Ed. 4. 43.

Condition to deliver Possession.

Condition if R. H. upon request by the Plaintiff his Heirs or Assigns should deliver the Possession of such a Farm to the Plaintiff, his Heirs or Assigns, &c. The Plaintiff assigns the Reversion by Deed to Richard and Henry P. in Fee. At the day H. P. alone came and demanded the Possession, without notice given of his coming, &c.

Per

Per Cur. 1 The demand of *H. P.* is the demand of both, and the delivery of the Possession to one had been delivery to both. 2 The two Bargainees need not give notice to the Defendant that they had the Reversion by Bargain and Sale; for being the condition of a Bond, it is at his Peril to take notice, being obliged to deliver it to him or his Assigns, *Cro. Jac. p. 475. Hingen and Pain. Bridgman Rep. 128.*

The Condition was, that the Defendant should not deliver Possession to any but the Lessor, or such persons as should lawfully recover. The Defendant pleads he did not deliver but to such persons as lawfully recovered it: Good Plea, he need not shew he delivered to *J. S.* by lawful Title, *1 Keb. 380, 413. Nicholas and Pullen.*

Conditions concerning Wives.

Condition not to sell the Apparel of his Wife; its a good condition.

If a man bind himself to a stranger to pay 20 *l.* *per Annum* to his Wife, this is good, *1 Rel. Rep. 334. Smith and Watson.*

The Condition was to permit his Wife to make a Will, and dispose such Legacies; the Defendant pleads she made no Will; it was found she made a Will, but that she was Covert, &c. *Per Cur.* This is a good Will, within the intent of the Condition, and it is but her appointment, which the Husband by his Obligation is bound to perform, *Cro. Car. 219. Marriot and Kinsman.*

The Condition was to permit his Wife to make a Will, and to dispose of one hundred pounds

of her Husbands Goods, to be paid within one year after her decease. The Defendant pleads he permitted his Wife to make a Will: the Plaintiff demurs. *Per Cur.* he ought to have pleaded, that he had paid accordingly, otherwise he doth but answer to one part of the Condition. *Cro. Car. 597. Sherman and Lilly.*

The Condition was, if he should survive *A. S.* his Wife, that if within three Months after her decease there were paid to the Obligee 300 *li.* to and for such uses and purposes as the said *A. S.* by any Writing under her Hand and Seal subscribed, &c. should nominate and appoint, that then, &c. The Defendant pleads she did not limit, &c. any use for the employment of that money. The Plaintiff replies, she by her Will in Writing, &c. did appoint such Sums to be paid. The Defendant demurs, because she ought to have made a Deed in Writing, and not a Will. But *Per Cur.* this Declaration was good; and though the pleading was, that *A. S. Voluit & devisavit*, and not that it was appointed by her; yet *Per Cur.* well enough; for it is not properly a Will that is made by a feme Covert, but a Writing in nature of a Will. *Cro. Car. 376. Tille and Petre.*

Authority was given to the Wife to devise 300 *li.* and she disposeth 200 *li.* by fifties, and well.

Condition to make a Will in the presence of her Husband, or if he refuses it, such person as her Husband should appoint. *Qu.* If refusal ought to be alledged, or notice to the Husband, 1 *Keth. 347.*

Harris versus Bessie.

To procure a Marriage between the Plaintiff and *B. P.* such a day, or before. The Defendant pleads

the

the Plaintiff before that day called *B. P. Whore*, and used other base Language, by reason whereof the Defendant could not procure the Marriage; no Plea, for he hath not shewed his endeavour to procure the said Marriage; and notwithstanding such words they might have inter-married, *Cra. El. p. 694. Blandford and Andrews.*

A Condition to pay such a Sum as *E. B.* should appoint after Marriage with the Defendant by her last Will, or other Writing signed in *test* form; the Defendant saith she made no Will, nor any other Writing, &c. the Plaintiff sets an appointment in Writing forth; the Defendant saith it was after revoked; this is no departure, because its a fortification of the Bar, and could not be foreseen, and its revocable, contrary to *Hobert, Ormonds Case, 1 Keble p. 821. Shepard and Spencer.*

A Condition not to meddle with the Goods of the Feme, which were her first Husbands, but that she and her Children might enjoy them *sans* disturbance, claim or interruption of the Defendant; Breach assigned, that the Defendant took and detained the Goods of the first Husband; and *Issue pro Quer.* and the Breach well assigned, *Cra. Car. p. 204. Crawle and Dawson.*

A Condition to pay so much yearly to his Wife; it good, as well as to give her a Gown, *27 H. 8. 27.*

Condition to accept a Lease.

A Condition, If the Obligor accepted a Lease by Indenture of such Lands upon the Plaintiffs request, and sealed a Counter-part thereof, then, &c. The Defendant pleads, the Plaintiff did not request him to accept a Lease; the Plaintiff replies, he had caused an Indenture to be drawn, and ingross according to the said Condition, and a Label affixed *cum sera appensa*, and required and offered it to the Defendant to accept thereof, and he refused; Issue upon the request found *pro Quer.* Error. 1. *Sera* is not Wax, *sed non allocatur.* 2. Because he avers not the Lands mentioned in the Indenture, are the same in the Condition; but because he pleads *non requisivit*, and he replied it was *secundum formam Conditionis*, it shall be intended the same Lands; and if they were other Lands, the Defendant ought to shew it, *Cro. Car. 560. Lee versus Russel.*

Condition to appear at a Place.

THE Condition was, That S. and his Wife should appear at the Marshalls Court: S. appears and pleads, that at the time of the Obligation he was *solus & innuptus*; Judgment *pro Quer. sur dormuer*, *Stiles p. 17. Pain and Skelton.*

To appear within eight days after warning; warning ought to be shewn to be given of the Action brought, *Cro. Jac. 46. Yelv. p. 52. Hargrave and Rogers.*

In Debt on an Obligation to appear at a certain day; Imprisonment is no Plea, 2 *Rolls Rep.* 136. *Anonymous.* In a Recognizance to appear, &c. Imprisonment by Commissioners of the Admiralty is an excuse, *Moor n.* 251. *Lacies Case.*

A Condition to come to the Kings Head, &c. on the 12th of October, and there elect two Arbitrators, who with two others to be elected by the Plaintiff, should arbitrate of all Sums, &c. the Defendant pleads, on the 12th of October he came to the Kings Head, &c. and there elected two Arbitrators, but the Plaintiff was not there; Plea not good, because he shewed not at what hour of the day he came, nor how long time he continued there; for he ought to be there so long time before the last instant, as the Arbitrament may be made; neither doth he shew that his two Arbitrators were there present, *Cro. Eliz.* 349. *Edmonds versus Marks.*

The Under-Sheriff took a Man by Attachment out of Chancery, who took Bond of him to appear at the day contained in the Attachment: *Per Cur.* the Bond is void, for that the Defendant was not bailable upon the Attachment, 3 *Leon.* 208. *Bland and Riccards.*

Debt upon an Obligation taken in the Kings Name, in the Court of Requests, with a Condition to appear before the Master, &c. the declaration is general, that the Defendant such a year and day by his Obligation did acknowledge himself to be bound to the King in 60 l. to be paid, &c. and naught, because it did not appear to be taken in a Court of Record, 1 *Brownl. p.* 68. *Rex versus Castle.*

Not

Not to alien.

A Condition to perform Covenants; one was That the Lessee, his Executors or Assigns, nor any other who shall come to have the Estate or Interest in the Term, shall not alien their Estate *sans* licence of the Lessor, but only to his Wife or Children; the Lessee deviseth it to his Wife; she aliens, the Covenant is broken, it extends to the Lessee and his Assigns, and she is Assignee express; so although there was once an Alienation by Licence, yet that Assignee cannot alien *sans* Licence. Where a Condition is in a Lease that neither he nor his Assigns should alien without Licence; the Lessee died Intestate, the Administrator was bound by this Condition, *Gro. El. 757. Thornil and Adams versus King & sa Feme.*

A Condition not to alien without the consent of the Lessor; the Lessee makes his Executor, and deviseth this to him; the Executor enters generally, the Testator not being indebted to any; this is a Forfeiture, *1 Rolls Abr. 429. Dampson and Symons.*

Not to continue a Suit.

A Condition that he shall not continue such a Suit. If he continue it by an Attorney, its a Breach; *alio* if the Attorney enters the Continuance without his privity, *Gro. Jac. 525. Gray and Gray.*

To convey Land upon Marriage.

THE Condition was, That after Marriage of the Plaintiff, and having a Son by his Wife, that if he conveyed Lands to the value of 40 l. *per ann.* in Tail to the Son, to enjoy after the death of the Obligor, that then, &c. the Defendant shews the day of the Marriage, and the having of a Son, and that he made a Feoffment to a Stranger, to the use of himself for life, and after to the use of the Son in Tail; the Plaintiff replies, *quod non feoffavit*; the Bar is ill, for the Infant was not made party to the Conveyance, nor had any Deed to prove his Estate; but the Plaintiff by the Replication hath admitted the Bar to be good; and he may traverse the Feoffment or the Uses, *Crow. Eliz. p. 825. Stinfild and Somerset.*

A Condition, if the Obligor pay 200 l. by the first of December 1634. that then the Surrender should reconvey on request; the Plaintiff alledgeth a Request in 1644. the Defendant demurs: *Per Cur.* the Surrender being absolute, and in trust only for payment, there being no payment at the day, this Mortgage is irremediable; Judgment *pro Defendente*, 3 Keb. 786. *Hancocks Case.*

To perform a Promise.

A Condition to perform such a Promise made by the Obligor to the Obligee, but if not appearing when this breach of Promise was made

made, it was Error, *Stiles 17. Sanderson and Martin.*

Condition to do things belonging to a Trade.

A Condition to make all such Linnen as he should want during his living single; the Sempstress is not bound to find Linnen; nor a Tailor Materials; the Intent may guide the Contracts; *contra* of a Shoe-maker, Gold-smith, &c. *1 Keble 466. Oates versus Thornel.*

Condition to deliver Goods, or pay Value.

A Condition to deliver all the Tackle of a Ship mentioned in an Inventory, under the Hands of four Men, or in default thereof to pay so much Mony to the Plaintiff before such a Feast as the four Men should value the Tackle at; the Defendant said they did not value the Tackle; no Plea, for he had election to do two things; and if he cannot do the one, he is to do the other; and it is at his peril to procure the Men to value the Tackle, *Moor n. 844. More and Morecomb.*

A Condition at the end of the Term of a Lease of Lands and Goods, to deliver the said Goods to T. or make him such satisfaction for them as shall be by two indifferent Persons to be elected for review of them, thought fit; the Defendant pleads, two Persons were not elected; the Plaintiff replies, two were elected; the Defendant rejoins, that they were not chosen by consent of both

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both, for the Defendant consented not to the election: *Per Cur.* the election by the Plaintiff is sufficient; for the word (indifferent) shall be referred to the Parties elected, and not to the election of the Parties; *aliter*, if it had been by two Persons indifferently to be chosen, 2 *Rolls Rep.* 86. *Talbot and Benson. 5 Rep. Hungates Case.*

Condition to reap and carry Corn, &c. over the usual Way.

A Condition to permit and suffer *J. S.* quietly to reap and carry, &c. without any disturbance or interruption of him; the Defendant pleads *permisit*; the Plaintiff replies, there were some Acres sown with Rye, and shews the certainty; and coming to reap he prohibited him, saying these words, *Moneo & prohibeo te quod neq; meis ibid. neq; abcarriabis*, &c. this disturbance is a Breach, 1 *Anderson n. 188. fol. 137. Bur and Higs.*

Condition to give an Account.

A Condition for a sub-Collector of the Subsidy, to give a sufficient account in the Exchequer of all such Sums he had received, and to discharge and save harmless the Plaintiff of these Receipts against the Queen, and to procure to the Plaintiff a sufficient Acquittance or Discharge out of the Exchequer, as in the like Case is used, that then, &c. the Defendant pleads, he had accounted, &c. and had discharged and saved harmless the Plaintiff, &c. and had procured Acquittance

tance; the Plaintiff demurs, for he pleads in the affirmative he had discharged, and shews not how. *Qu.* (This being a multiplicity of things, if the general pleading be not good, *Cro. El. p. 253. Acton and Hull.*)

A Condition to give account of all Monies gathered by virtue of a Belet &c. the Defendant pleads, he gave account of all such Monies; ill Plea; he ought to specify what he had received, or else to say he had received nothing, *1 Keb. 760. Woodcot versus Cole.*

A Condition to give a just and true account, (being a Brewers Clark;) the Defendant pleads performance; the Plaintiff replies, by receipt of 30*l.* the Defendant rejoins, it was stolen out of the Plaintiffs Count-house; the Plaintiff demurs; the Robbery is a good Bar, *2 Kettle 761, 779, 830. Kere and Smith.*

A Condition was, to render a full account to the Plaintiff of all such Sums of Mony and Goods which were due and owing to *W. N.* at the time of his death, which shall any ways come to the hands of the Defendant, and shall upon such account, within the space of one Week, when required, make an equal dividend of all such Sums of Mony and Goods, and pay the Plaintiff his proportion of the same; the Defendant pleads no Goods or Sums of Mony came to his hands. *Et hoc paratus*, &c. the Plaintiff replies, a Silver Bowl belonging to the said *W. N.* at his death came to the Defendants hands such a day and place. *Et hoc paratus est verificare*; the Defendant demurs: *Per Cur.* the Replication is ill, for the Plaintiff hath not shewed a Breach, for he ought

ought to shew the Defendant had not made a dividend, or paid the proportion *1 Sanders p. 102. Heyman and Gerrard.*

Conditions concerning Wills and Legacies.

A Condition to suffer his Wife to make her Will, *vide antea.*

A Condition to observe, perform, fulfil and keep the Will of *M. D.* in all Points and Articles, according to the true intent and meaning thereof, that then, &c. and *D. M.* by his Will bequeathed to the Poor of such a Town 10*l.* and to *J. S.* 3*l.* The Defendant pleads he had paid the 10*l.* to the Poor, and as to the 3*l.* he is, and always was ready to pay the same to the said *J. S.* if he had demanded it; a good Plea; for this Obligation (the Condition of which being general to perform the Will) hath not altered the nature of the payment of the Legacy; but the same remains payable in such manner as before upon request, *1 Leon. p. 17. Frings and Lewis.*

A Condition to find *J. S.* till he come to the Age of 21 years, sufficient Meat, Drink and Apparel; he pleads, he had found sufficient Meat, Drink and Apparel all the time at *W.* its good, though he alledge it generally; and Issue was taken upon the Apparel; for he durst not take Issue upon all the things for the doubleness, *12 H. 7. 14.*

A Condition to have free ingress, egress and regress; he pleads, he had ingress, egress and regress, and saith not (*frank*) male Bar, *Latch. 47. Climsen and Pool.*

A Condition to have all the Debts, and that the Defendant should not release any in a certain Schedule mentioned; the Defendant pleads performance generally, but doth not set forth the Schedule; he should have shewed what were the Debts mentioned, and then have averred performance *de omnibus & singulis, & quod non relaxavit*. Qu. 1 Keble 680. Barcroft and Doughty.

A Condition, If the Defendant should make composition with one E. for Lands, &c. then he should pay the Plaintiff 30 l. The Defendant pleads, he made no composition; the Plaintiff replies, that the said E. did grant unto the Defendant a Rent-charge of 5 Marks in Fee, in satisfaction of his Title, &c. which the Defendant did accept, &c. and so he made composition; the Defendant *protestando* E. *non concessit*, &c. *pro placito*, &c. that the Defendant did not accept it in satisfaction, &c. a good Plea; its no composition without consent, which depends upon the acceptance, Hob. p. 178. Earle and Tuck.

A. bound to stand to, and observe such order and decree as the Kings Counsel of the Court of Requests should make, and that the Defendant did not observe it; the Defendant pleads, that the King and his Council did not make the Decree; no Plea, Marsh Rep. 78. Smithson and Simpson.

Expositions and Constructions of a Condition.

I shall now shew how Conditions are to be expounded and construed by some special Rules and Cases, and what shall be intended a good

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good performance, *Et vide supra Sparsum sub multis titulis.*

Sometimes Conditions must be performed according to the very Words and Circumstances.

A Condition to stand to the Award of J.S. so as the said Award be made in Writing indented under his Hand and Seal; the Award shall not bind, if it be not indented, though it be under Hand and Seal, 1 *Rolls Abr.* 409. *Holmes and Hoy.*

Vid. infra plus tit. Pleadings, Where a Man is to plead according to the express Words of the Condition.

If the Condition be performed in substance it is good, though it differ in words.

Where one is bound to deliver the Testament of the Testator, if he pleads he hath delivered *Literas Testamentarias*, it is good, 7 *E. 4.* 3.

When the Condition is to make a Feoffment, Lease and Release is a good performance, 17 *E. 4.* 3. Though this be a collateral Condition, yet it is well performed, for it amounts in Law to a Feoffment, *Co. Lit.* 207. a.

If the Covenant be to grant the Reversion of the Tenant for Life or Years, and he enters upon the Lessee and makes a Feoffment, and the Lessee re-enters; the Condition is performed, for the Effect is performed, 1 *Rolls Abr.* 426.

The Condition is to give Licence to the Oblige to carry Trees, &c. and he gives him Licence, the Condition is performed, though a Stranger, who has Right, disturbs him; for this extends but to the person of the Obligor by these words, 18 *E. 4.* 20. b. *Aliter*, if the words had been, *he shall have Licence.*

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But it must be performed in substance exactly and not in shew; for the performance of a Condition ought to be true, full and effectual according to *Goodal's Case*, 10 Rep. And not illusory, *Lit. Rep.* 130. *Brockham's Case*.

A Condition is to retract such a Suit, a Discontinuance of this is no performance, because it differs in substance; for a *Retraxit* is a Bar in another Action, and so is not a Discontinuance, 20 E. 4. 8. *Aliter* in Case of an Award, as if it be awarded he shall withdraw his Suit; Discontinuance is a good performance of the Award, for the intent of the Arbitrator was not that he should make a legal *Retraxit*, but prosecute the Suit no farther, 21 E. 4. 38.

Improper words shall not vitiate a Condition; words, by which the intention of the parties may appear, are sufficient to make the Condition of a Bond.

A Condition to stand to an Award, *ita quod* the Award be made on or before, &c. but if the Arbitrators shall not agree upon the Award, that then they shall choose and elect an indifferent Man, and they shall stand to his final end, &c. *Per Cur.* the Condition is good enough though not so properly expressed. And that the Defendant had forfeited his Obligation for Non-performance of the Award of the Umpire; and though such construction will prejudice the Defendant (and Conditions being for the benefit of the Defendant shall be construed favourably) yet the Law may not be altered.

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But no intention of the parties shall be construed contrary to the express words 39 H. 6. 10. a. The Condition was that if the Defendant do not pay so much Money, the Obligation shall be void; it was naught; though the intention was he should pay the Money, 1 Sanders 66. Butler and Wigg.

The Condition was to appear, &c. and the Conclusion was, then the Condition of this Obligation shall be void, and so no words to make the Obligation void; but *per Cur.* it is a good Condition, though these words had been omitted, 2 Sanders. p. 78. Maleverer and Hawksby.

Conditions construed according to Intent.

NO intention of the parties shall construe it contrary to the express words, *Vid. antea*, 9 H. 7. 20. 17. 22.

Conditions ought to be construed according to the intent of the parties, if it may *confer*; and Conditions of Obligations are not broken unless the intent be broken.

A Condition to appear such a day in such a Term, and the Obligor appears at a day in the same Term before the day mentioned in the Condition, at the Suit of another Man, which is an appearance in Law for all Suits which shall be commenced against him the same Term, yet because this is but an appearance by fiction in Law and not an actual appearance at the day, the Condition is broken; for peradventure had he appeared actually, special Bail might have been required, 1 Rolls Abr. 426. Sir Richard Bullers Case.

If the Lessee of an House covenant not to lease the Shop, Yard or other things pertaining to the House, to one that sells Coals; and after he lets all the House to one that sells Coals, he had broken the Condition, for he had broken the intent, 1 *Rolls Abridg.* 427. *Bonner and Langley.*

A Condition that the Lessee shall not do any waste; and the Lessee suffers the House to fall for want of covering and repairing, though this is not a Feasance, but only a permission, yet the Condition is broken, 1 *Rolls Abr.* 428. *Qu.*

The Condition of the Obligation was, if the said *R. T.* shall not at any time or times be aiding or assisting to *T. E.* in any Actions, Suits, Vexations, &c. The Plaintiff assigns a Breach, that before the Obligation he brought Trespass against the said *T. E.* and *R. T.* and that he had Judgment against both; and that after the making the Obligation *T. E.* and *R. T.* brought Error. *Per Cur.* it is no Breach; for it is not the intent nor reason he should be barred to defend himself by joining with *T. E.* against the unjust proceedings of the Plaintiff. And so if after Verdict the Plaintiff had released, and yet took Judgment by Execution, they two might have joined in *Audita Querela.* *Hobart.* p. 304. 1 *Rolls Abr.* 429. *Lamb and Tompson.* This is not properly an Action, but a Suit to discharge him of a tortious Action wherein they must join.

A Condition if the Plaintiff might quietly take and enjoy Woods sold; and if the ground, whereupon it groweth, be four Miles distant from *Rye*, &c. then, &c. The Defendant pleads, the Plaintiff

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tiff had quietly, &c. and that the said Land by the next high and usual way for Carriages is 4000 Paces from the Town of Rye. *Per Cur.* the intent was that the Plaintiff by selling that Wood should not incur the danger of the Statute of 23 Eliz. c. 4. And it ought to be pleaded that it is every way distant four Miles from Rye, and not not by usual ways, and the four Miles by 4000 Paces is well, 2 Leon. p. 113. *Mingy and Earl.*

The Condition was, that if the within bounden J. L. shall happen to dye without Issue of his Body lawfully to be begotten, that then if the said J. L. by his last Will, or otherwise in Writing shall in his Life time lawfully assure, &c. The Condition being made in benefit of the Obligor shall have Construction according to the intendment of the parties to be collected out of the words of the Condition, and the intention of the parties was, that a Conveyance should be made by the Obligor in his Life time by his Will or otherwise of the Lands, *Jones Rep. p. 180. Eaton and Laughter.*

The Condition, if the Obligor pay so much then the Obligation to be void, or otherwise it shall be lawful for the Obligee quietly to enjoy such Lands. The Defendant pleads quiet enjoyment. The Plaintiff demurs; for that the Condition depends on the Payment or Non-payment, and that concerning the Land is idle: *Per Cur.* Conditions are to be taken according to the intent of the parties, if it may *constare*; but as these words, *then to be void*, are placed here, it cannot refer but to that which precedes, and not to the Land which ensues. *Regula*, Words in the beginning or end

of things refer to all, but those in the middle refer *ad media tantum*, as Lease for Life Remainder for Life rendring Rent, this goes to both Estates; but Lease for Life rendring Rent, Remainder for Life, *aliter*. *Siderfin* p. 312. *Ferres and Newton*.

In the Condition it was recited, that the Sheriff had constituted the Defendant Bailiff of an Hundred within the County. If therefore the Defendant shall duly execute all Warrants to him directed, then, &c. Warrants shall only be intended Warrants directed to him as Bayliff of the Hundred, *Horton and Day* cited 2 *Sanders* 414. And such only as are to be executed within the Hundred. And the Plaintiff must shew the thing to be done was within the Hundred, *Allen* p. 10. *Stratton and Day, mesme Case*.

A Condition, that his eldest Son shall marry the Daughter of the Obligee, and the Son dye, the second Son shall not marry her, that was not the intent, 27 *H. 4.* 14.

When a Man is bound to do or permit a thing, he ought to do or permit all which depends upon this in the performance of the thing, 11 *H. 4.* 25. b. 1 *Rolls Abr.* 422. Collateral things must be done or permitted; a Covenant to levy a Fine, it shall be at his Costs who levies it. A Man is bound to carry my Corn, it is no Plea for him to say, he had no Cart, for he is bound by implication to provide a Cart and all other necessities for the Carriage: So to mow my Grass, he must find Instruments; to cover my Hall, he is bound to find necessary Stuff, 16 *H. 7.* 9.

A Condition, that J. S. shall have ingress into his House; he ought to have a common entrance at the usual Door, and shall not be put to enter in by a hole backward or by the Chimney, nor may the other make a Ditch before the Door. If a Man hath Right to a Chamber, he must not be barred of his ingress; and yet the Doors ought not to stand open at Midnight. If I am bound to suffer J. S. to have a Way over my Land, if I lock the Gates I have broken the Condition, *Dartch p. 47. Clifton and Pook.*

A Condition is to be performed as near as may be.

The Condition is that J. S. and R. G. shall come in their proper persons before such a Feast to London, and to bring two Sureties to be bound with them to the Plaintiff in the Sum contained in the Obligation, then, &c. J. S. dyes, yet R. G. must do this; and although the Condition be not performed in the whole, yet if he may perform this by any possibility, he must do it, *15 H. 7. 2. 4 H. 7. 3.*

A Condition that he or his Heir shall surrender, &c. before such a day to the use of the Plaintiffs Executors, his Heirs and Assigns, &c. The Defendant pleads, the Plaintiffs Executor dyed after the making of the said Bond, and before the said Feast, (*viz.*) &c. The Plaintiff demurs, and Judgment for the Plaintiff, *1 Brownl. Rep. 72, Horn and May.*

In many Cases, Endeavour shall excuse. The Condition was to enfeof Baron and Feme of Land, if Baron die, if he do it as near as he can it is good, *15 H. 7. 2, & 13.*

If there be an indifferent construction which may be taken two ways, that way shall be taken which is most reasonable to make the Obligation to stand in force.

The Condition was, that whereas the Defendant had granted an Annuity to the Plaintiff, that the Defendant should make farther assurance to the Plaintiff for the enjoying thereof within one Month when he should be thereunto required: *Per Cur.* the Month shall be after the Request, and not within a Month after the date of the Bond, *Stiles p. 242. Wentworth versus Wentworth.*

A Man shall be supposed by the Condition to do what properly belongs to him.

The Condition of the Obligation was, that the great Bell of *M.* should be carried to the House of the Obligor in *W.* at the Costs of the Men of *W.* and there to be weighed in the presence of, &c. and of this the Obligor to make a Tenor to agree in *teno & feno* with the other Bells of *M.* In this Case the Obligor ought to weigh this, for it belongs to his Occupation, *9 Ed. 4. 3. b. 1 Rolls Abr. 465.*

If a Man be bound to carry my Corn, he must find a Cart; so to mow my Grass he must find Instruments; so to cover my Hall he is bound to find necessary Stuff, *16 H. 7. 9.*

A Man may be said to forfeit a Condition if he do what in him lies to break it; or if he do such an Act which may consequently produce a Forfeiture, though in strictness it be not broken by him.

A Condition not to devise a Lease to any person but to his Child or Children, and he deviseth this
to

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to a Stranger, the Executor never consents to the Devise, yet this is a Forfeiture; for he that had done all that was in his power to pass this by Will, and put it in the power of the Executor to execute it, 1 *Rolls Abridg.* 428, 429. *Burton and Horton.*

The Condition is that the Grantee of a Reversion shall not grant this over to *J. S.* If he grant the Reversion to *J. S.* by his Deed, though the Lessee never attorn, yet this is a Forfeiture, *Id. ibid.*

A Condition not to assign his Lease that so it may come to *J. S.* and after he assigns this to *J. D.* the Condition is broken; for as much as by this means it may come to *J. S.* 1 *Rolls Abr.* 429. *Cummin and Richardson.*

Where a Condition of an Obligation shall be expounded by a matter *dehors.*

The Condition was to save the Plaintiff harmless from all Actions and Damages that might arise upon the Release of the Defendant out of the Execution (being then in Execution at the Plaintiffs Suit) from all persons that might trouble him concerning the said Release. The Defendant pleads the Plaintiff sued one *N.* for 100 *l.* and that he and *Hart* became his Bail; and that the Plaintiff had Judgment against *N.* and the Bail, and the Defendant was taken in Execution, and though the Plaintiff released him, &c. The Plaintiff replies, and confesseth the Bail and Judgment; but saith that *Hart* gave him Security for his Mony, and the Plaintiff promised *H.* he might lay the Execution on the Defendant, and that he would not release him *sans* consent of *H.* on which *H.*
pro-

procured him to be taken in Execution, and moved the Plaintiff to discharge him, who acquainted him with his promise to *H. ut supra*, and thereupon the Defendant made him this Bond, and so he discharged him. *H.* brought an Action against him for Breach of Promise, and recovered 150 *l.* damages, and so he was dammified. The Words are apparent to save harmless from some damage that might arise not upon the Release alone, but upon some collateral thing besides the Release, and yet by means and occasion of the Release, *Hobart p. 269. Wildy and Wilkinson.*

Expositions of Words, Sentences and References in Conditions.

[*During the Time.*] **T**HE Condition was, whereas the Lord *A.* had deputed *T. J.* to be his Deputy Post-Master to execute the said Office from, &c. for the term of six Months following. Now if the said *T. J.* shall and do for and during all the time that he shall continue Deputy Post-Master, execute and pay such Mony, &c. *Per Cur.* the Condition refers to the Recital only, whereby the Defendant was bound only during the six Months and no longer, and the indefinite time shall be construed during the six Months. 2 *Sanders* 413. Lord *Arlington* and *Merrick.*

Condition faithfully to execute the Office of, and quarterly to make Accompt of all Monies by him received, &c. and pay all Monies by him received, and do Accompt such times as he shall be

be reasonably required. The Defendant pleads performance to all but the Accompt, and for that he saith he was never reasonably required to do this. *Per Cur.* this Clause (being reasonably required) goes only to the payment of the Mony, being the last antecedent, and the Accompt is limited to be made quarterly. *Lit. Rep. 101.*

The King and Points.

[Then living.] The Condition was, if it happen the said *J. M.* to dye before the Feast of, &c. without Issue Male of her Body, by *R. B.* begotten then living, that the Obligation shall be void. The Defendant pleads, *post consecrationem obligationis*, and before the said Feast the said *J. M.* dyed, *sens* Issue Male of her Body then living: The Plaintiff replies, she had Issue *H. B.* and before the said Feast *J. M.* dyed, the said *H. B.* then living, and that *H. B.* dyed before the said Feast, *Per Cur.* the Plea is good; the words (then living) shall not refer to the time of *J. M.* death, but to the Feast mentioned in the Condition, *Anderson, Bald and Molineux.*

[Payments] A Condition to perform all Covenants, Payments and Agreements, contained in a Deed Poll. The Defendant pleads the Deed Poll, *in bac verba*; in which was contained one Grant of Lands for 100 *l.* and 200 *l.* to be paid, in which was a Proviso; If the Defendant should not pay for the Plaintiff, to one *J. S.* 40 *l.* at such a day, the Bargain should be void. The Defendant pleads performance of all Covenants; the Plaintiff assigns a Breach in not payment of the 40 *l.* The Defendant demurs. Judgment *pro Defendente.* The word (payment) in the Condition,

dition, shall have relation only to such payments mentioned in the Deed, as is compulsory to the Defendant; but this was not, for the Defendant may, if he will, forfeit his Land, *1 Brownl. Rep. 113. Briscoe and King.*

Condition to pay when the Kings Majesty shall be Restored, by Conquest, Accomodation, or otherwise, the difference between him and his Parliament being recited. The Defendant pleads King Charles the I. was Beheaded, and never Restored, &c. *pro Defendente.* This appears to be personally meant of the King, and not in his politick capacity. *1 Keb. 820. 2 Keb. 215. Grinsells Case.*

[*Either*] So as the Award shall be delivered to either of them, (either) shall be expounded (every) for each ought to have a part. *Cro. Eliz. 448. Parker and Parker.*

Debt upon an Obligation, dated 1. of February, 25. *Eliz.* The Defendant pleads a Release, bearing date after making of the Bond, of all dues, demands whatsoever, except an Award made between the Plaintiff and one G. W. with R. K. deceased; and one Obligation of 500 l. for performance of the said Award, bearing date 29 April, 25 *Eliz.* In the Replication the Plaintiff shewed the special matter, that the Award was made the 29th of April, and the Bond was made the 1 of February. *Per Cur.* (bearing date) shall have reference to the Award and not to the Bond. *1 Brownl. Rep. p. 54. Gage and Gilbert.*

The Condition was to enjoy a Ship with all the Furniture, without disturbance: The Case was, after Sale of the said Ship, a Stranger sues the Plaintiff

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tiff for Money due for certain Ballast bought by the Defendant, and put into the Ship before the sale of the Ship. *Per Cur.* Ballast is no Furniture of a Ship, but Guns are. 1 *Leon. Case* 59. fo. 46.

Kinters Case.

[Miles] If such a place be 4 Miles from Rye, it shall be construed 4000 Paces. *Cro. Eliz.* 412.

Minge and Earl.

If I am bound to you, that J. S. (who is in truth an Infant) shall levy a Fine before such a day, which is done accordingly, and after the same is reversed by Error, yet notwithstanding the Condition is performed. 1 *Leon. p.* 54. in *Leighs Case. Obiter.*

A Condition to deliver 18 Barrels of Ale on Contract; the intent is, the Vender shall have the Barrels again, when the Ale is expended. 27. *H. 8.* 27.

I am bound to give a Shoulder of every third Deer which I kill in my Park, yet I may dispark it; for this comes not within the Rule, *That a Man shall not by his own Act defeat or frustrate his own grant;* but it is to use the liberty I reserved to my self upon my grant, standing with the grant. *Hob. p.* 41. in *Coopers Case.*

I shall now speak something of Statutes and Recognizances; for that they are Obligations on Record; but I intend not to handle the Learning at large as to Executions thereon, and what is liable thereunto; for that is more properly to be treated of under another Title: But I shall here speak of the Nature of them, the Form of them, and Manner and Effect of the Acknowledgment, and something

thing of the Process; and they concern Subject and Subject; or the King and a Subject; of the first are,

Statutes and Recognizances.

Statutes are of two sorts. Statutes { Merchant,
Of the Staple.

Statute-Merchant is acknowledged before Persons authorized, sealed with the Seal of the Debtor, and of the King, which is of two pieces, the greater is kept by the Mayor, &c. and the lesser by the Clerk; this is by *Stat. de Mercatoribus*, 13 Ed. 1. 4. *Acton Burnel*, the form of it *vide post*. This is become now a Common Assurance.

Statute-Staple is founded on 27 Ed. 3. 2. this is acknowledged before the Major of the Staple; but now by Stat. 23 H. 6. a Statute-Staple improperly so called, may be acknowledged before one of the Chief Justices, before the Major of the Staple at *Westminster*, or the Recorder of *London*; it is sealed with three Seals, the Seals of the Comptroller, the King, and the Person before whom it is taken; the form *vide post*.

They are both of one effect as to execution.

All Bonds concerning the King shall be of the nature of Statute-Staples; and so for first Fruits, 33 H. 8. 39. 26 H. 8. 3.

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The manner of making.

Let there be a certain day of payment limited in it. And yet one *Davies* acknowledged a Statute-Merchant to *J. M.* The Statute was formal in all Points, saving that no day of payment was limited in the said Statute: Upon demurrer to *And. Querela*, the Statute was adjudged to be good; when it appears by the Statute when the Money is to be paid, its well enough, as it doth here, (*viz.*) presently; there ought to be a time certain when the Money shall be paid, either an actual time, or a legal time; if it be to be paid at *Michaelmas* after *J. S.* shall come to *Pauls*; its not good, because it may not appear to the Major judicially when to make Execution, *Winch*, 82. *Hickford* and *Machin*, solemnly argued by all the Judges; the same Case in *Jones Rep.* 51. *Bridgmans Rep.* 16, 17, 18.

The Statute-Staple is to be sealed with the Seal of the Conusor, and the Seal of the King appointed for that purpose, and with the Seal of the Chief Justice, Mayor and Recorder before whom it is acknowledged; and they before whom it is taken do subscribe their Names to it.

If a Statute-Merchant be not sealed with the Seal of the Debtor, and there be not a Seal of two pieces annexed to it; this is no good Statute, neither can it take effect as a Statute, 35 *El. Holingworth* and *Asch.*

An *Querela* to avoid a Statute-Merchant taken before the Mayor of *N.* surmising in his Writ two Causes to avoid the Statute. 1. The Mayor there had

had not any such Authority to take the Statute.
 2. *Quod scriptum recognuit. &c. non fuit sigillat. cum sigillo Reginae de duabus peciis provis. pro sigillatione Statut. Mercator.* and upon this Writ the Plaintiff counts and alledgeth these two matters: *Per Cur.* the Count is double and vicious; for though a Writ of *Audita Querela* may comprehend divers Causes for the avoidance of a Statute; yet the Count ought to comprehend but one Cause; and either of these Causes alledged was sufficient to avoid the Statute; and an *Audita Querela* lieth in such Case, and he shall not be put to sue a Writ of Error to avoid it, *Cro. El. 809. Forrest and Ballard;* but he cannot assign want of one of these Seals for Error, if he had admitted the same in the Common Pleas, *Moor n. 738. Worsley and Charnock.*

Those that are meer Recognizances (as before) a Master in Chancery, &c. need not be sealed, but they must be enrolled, *Cro. El. 355. 1 Leon. 228. Ascue and Fotiam.*

Issue is, whether there are two Seals; its well tryed by a Jury, and not by the Mayors Certificate. Statutes and Recognizances must be enrolled, and being inrolled it binds Persons and Lands as a Record from the day of the entry of it; upon the Roll its a Recognizance from the first acknowledgment, and binds as a Record from that time, *2 Rolls Rep. 382. Allen p. 12. Stiles p. 9.*

And all Statutes-Merchant and Staple are to be brought to the Clark of the Recognizances within four months, and to be inrolled within six months, otherwise they will be void as to Purchasers, *27 Eliz. c. 4.*

But

But now by the Statute of Frauds and Perjuries, the day of the month, and year of the enrolment of the Recognizances, shall be set down in the Margent of the Roll, where the said Recognizances are acknowledged; and no Recognizance shall bind any Lands, &c. in the hands of any Purchaser, *bona fide*, and for valuable consideration, but from the time of such enrolment, 29 Car. 2. 1.

By whom acknowledged, and how.

Baron and Feme enter into a Statute or Recognizance; this binds not the Wife, albeit she survives her Husband, 10 Rep. 43. 2 Inst. 673.

If an Infant acknowledge a Statute or Recognizance, its voidable by *Audita Querela* during his minority; but he cannot avoid it after his full age, neither by *Audita Querela* nor Writ of Error, because of Infancy only, Moor n. 206. Yelv. 88. Randle and Wale. Co. 2 Inst. 673. Dyer 132. and the way to avoid it must be by inspection, which cannot be after his full age, 1 Bulst. 187, 188.

Infant acknowledgeth a Statute, and was taken in Execution, and at full Age he brought *Audita Querela* to avoid the Execution: Per Cur. the *Audita Querela* shall abate; he shall not avoid it, it being matter of Record; but if he will avoid it, it must be during his minority, Moor n. 196. Worsleys Case. 1 Anderson 25. Noy p. 16.

A Recognizance acknowledged by an Infant, and he was inspected, and adjudged to be within Age, and thereupon had a *Scire Fac.* against the

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Conusee, and upon a *nichil* returned, it was adjudged the Recognizance should be void, and he be discharged; whereupon Error was brought, for that there ought to be two *nichils* returned, for two *nichils* amount to a Garnishment, and without Garnishment and Oyer of the Party to whom the Recognizance was made, it ought not to be adjudged to be cancelled; and for this cause it was reversed. And now because the Conusor is at present of full Age, and cannot have a new Writ of *Audita Querela* to be inspected, it was moved, that he may have a new Writ comprehending the first Inspection, and the Judgment thereupon, and shew that the first Judgment was only reversed for Error in the Proceedings, and upon all the matter to be relieved, and so it was done, *Cro. Jac. 59. Yelv. p. 88. Randle and Wale.*

A Recognizance within the Statute 23 H.8.c.6. cannot be good except the Seal of the Party be to it.

Before whom taken.

They may not be acknowledged before any other Persons but such as are appointed by the Statutes.

Other Recognizances (besides those on 23 H.8.) may not be acknowledged before any, but such as have Power *ex Officio*; as the Judges of the Courts at *Westminster*, or by special Commission to take them, *Dyer 220.*

Out of the Commonalty of *London* there shall be two Merchants chosen and sworn, and before

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one or both of these Merchants the Recognizances may be taken, Stat 14 Ed. 3. 11. 8 R. 2. 4.

The Recognizance upon the 23 H. 8. c. 6. in nature of a Statute-Staple, is always to be acknowledged before the Chief Justice of the Kings Bench or Common Pleas (in the Term time) or in their absence out of Term, before the Mayor of the Staple at *Westminster*, and the Recorder of *London*.

All the Judges may out of Term take Recognizances in any part of *England*; and if it be taken before the Chief Justice of the Common Pleas, at Serjeants-Inn in Fleet-street, out of Term, its good, *Hob. 195*.

Every Court of Record, of any note, hath this Authority incident to it, to take Recognizances for all things which concern the Jurisdiction of the Court, and of all things which arise of or by reason of the Matters there depending; so it is taken before the Mayor and Aldermen of *London*, 1 Leon. 384. *Holinshead and Kings Case*. The Custom of *London* to take Recognizances, and the Form of the Declaration, *Cro. El. p. 186. Chamberlain and Thorp*, 1 Leon. 130, 131.

Where Actions to be brought on Statutes and Recognizances.

H. Brought Debt against *W.* and declared upon a Recognizance taken before Chief Justice *Hobart* at Serjeants-Inn in Fleet-street, *London*, out of Term, and laid his Action in *London*, whereupon the Defendant demurred; The Question was, whether the Action ought to be brought

in *Middlesex* where the Recognizance is recorded, or in *London* where it was acknowledged. Now in this Case the inrolment of the Record, that the Recognizance was taken before *Hobert* at the time and place aforesaid, by which it was a Record (*ipso facto*) then and there; and the inrolment is but a confirmation of the same Record, and makes no change; but because they both concur to the making it a perfect Record; the Action may be brought in either County; but by *Hobert*, in *London* as the more worthy part of the Act; and a *Scire fac.* upon such a Recognizance shall be directed to the Sheriff of *London*, and not of *Middlesex*: but if the entry of the Record were general, that the Recognizance was taken before *Hobert*, it shall be understood in Court, and then the Action shall be brought in *Middlesex*, *Hob. Rep. p. 195. Hall and Winkfield, 2 Rolls Rep. 182.*

1 Brownl. p. 69. Allen Rep. 12. Andrews and Harborn. In the Common Pleas its good both ways; in *B. R.* it ought to be where the Recognizance is taken, *Stiles p. 9. Andrews Case.*

Debt brought in the Common Bench on a Recognizance in *London*, *Cro. Eliz. Wilfords Case.*

Statute Staple suable in the Kings Bench or Common Pleas, as well as in Chancery, *Cro. El. p. 208. Clavel and Mallory. Audita Querela* in the Common Bench, for that the Conusor was within Age at the time of the acknowledgment, and well brought there, *mesme Case, 1 Leon. 303.* so in *B. R.* and the entry of the Inspection, *vide Cro. El. 208.*

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A Recognizance taken by the Custom of *London* makes the Debt local, *vide* 1 *Leon.* 130, 131, 284.

Scire Facias.

S*cire Facias* in the Kings Bench, on a Recognizance, may not be general without shewing the time of the Recognizance, and other particulars, for it is but a Pocket Record, therefore it is to shew what date it is, for otherwise the Party may not know what Matter to plead, and perhaps it is released or cancelled; and a Man may not plead a Release after *nil vel Record.* Qu. 2 *Siderfin* p. 156, 159. *B. R. Alston and Body.*

He that sueth forth a *Scire fac.* in Chancery, to defeat an Execution on a Statute-Staple, shall find Surety to prosecute with effect.

If the Statute hath but one Seal, it shall take effect as an Obligation, *Moor* n. 520. 2 *Rolls* Abr. 149. *Aiscue and Hollingsworth.* *Cro. El.* p. 494. *contra.*

A Recognizance is entire, and being discharged in part, is discharged in the whole; but if the default be to be paid in several Sums, there an Acquittance of part, is not a Release of the residue, 1 *Anderson* p. 235 *Case.* *Cro. El.* p. 182. *Cook* versus *Bacon.*

Sir G. Grisly now Baronet was bound in a Statute-Merchant before the Mayor of *Coventry* to D. D. upon a Certificate made by the Mayor into Chancery, took out a *Capias* against him by the name of G. Grisly Esq; and Writs of extent thereon; this the Court would not amend, but

advised to sue a new Writ out of Chancery upon the first Certificate, *scil. Capiat Corpus G. G. Mil. & Baronet. qui per nomen G. G. Armig. recognovit, &c. Hobert 129. Sir George Grisleys Case.*

If three are bound to me in a Statute-Merchant, and every of them by themselves, & *quemlibet eorum per se*, I may sue Execution against one of them only, or against all at my pleasure.

Declaration.

DEclaration is, That the Defendant *per scriptum suum Obligatorium, &c. concessit se teneri, &c. solvend. cum requisitus esset.* The Defendant demands Oyer of the Obligation which is of a Statute-Merchant, &c. *solvend.* at the Feast of, &c. Its an incurable Fault, *Cro. Jac. p. 316. Fox and Inkes.* A Statute for performance of Covenants, which perhaps shall never be broken, is no Plea in Bar by Administrator; but a Statute for payment of Money is allowable before Debts on Bond, and so it differs from *Harrissons Case, 5 Rep.*

Its no good Plea to say that such a one was bound in a Recognizance, and not to say *per scriptum Obligatorium*; and to conclude it was done *secundum formam Statut.* doth not help it; but in a Verdict it was agreed to be good, *Marches Rep. p. 76. Harris and Garret, 4 Rep. 65. Fulwoods Case.* If the Jury find a Recognizance before the Mayor and Recorder, though they say not *per script. Obligat. or secundum formam Statuti*, its good enough.

The Defendant pleaded to Debt on two Bonds, that the Intestate was indebted to the Plaintiff in a Statute-Merchant of 250 l. which Statute is in force, not cancelled nor annulled, and that she hath not above 40 s. *assets ultra*; the Plaintiff replies, that the Statute is burnt with Fire; Judgment *pro Quer.* on demurrer; for by the demurrer the Defendant hath confessed the burning of the Statute, and then it can never rise up; for the Statute 23 H. 8. c. 6. concerning Recognizances in the nature of a Statute-Staple, refers to the Statute-Staple, that the like Execution shall be had and made, &c. and the Statute-Staple refers to the Statute-Merchant, and that to the Statute of *Acton Burnel*, 13 Ed. 1. which provides, that if it be found by the Roll, and by the Bill, that the Debt was acknowledged, and that the day of payment is expired, that then, &c. but if the Statute be burnt, it cannot appear that the day of payment is expired; and consequently there can be no Execution. If the Conusee will take his Action upon it, he must lay *hic in Curia prolat.* 15 H. 7. 16. *Mod. Rep.* 186. *Buckly and Haward.*

If One acknowledges a Statute, and after a Judgment is had against the Conusor: now against the Conusor the Statute shall be preferred, but not against an Executor, 1 *Brownl.* 37.

If two Men claim the same Land, one by Extent upon a Statute, the other by a Judgment the same Term; he who claims by the Judgment shall be first satisfied, *Yelv.* 224.

A Statute-Merchant removed by *Mittimus* out of Chancery in *Com. B.* and Execution awarded there

there *super tenorem Recordi*. A Writ of Error lies in *B. R.* though the Original be in Chancery, and the Execution in *C. B.* *More n. 738. Worley and Charneck.*

In what Courts taken and sued.

Recognisance taken in the Court of the Admiralty is void, *Noy 24. Record and Johnson.*

How Recognisances shall be taken in *London*, *Stat. 14 E. 3. 111. 8 R. 2. 4, 5. 5 H. 4. 12.*

If a Statute-Merchant be not paid at the day, the Mayor, &c. shall cause the Debtor to be imprisoned (if he be Lay) and in their power, there to remain till he agree the Debt. If the Debtor cannot be found, they shall send the Recognisance under the Kings Seal into Chancery, from whence shall issue a Writ to the Sheriff of the County where the Debtor is to take his Body; and if he do not satisfie the Debt within a Quarter of a Year, all his Lands and Goods shall be delivered upon extent; but his Body shall be still in Prison, and he shall be allowed Bread and Water. And the Sheriff shall certifie the Justices of one of the Benches, how he hath performed the Service *i. e.* return the Writ. If the Debtor dye, the Body of his Heir shall not be taken.

If a Statute be rightly entred into as to the substantial Form, it is sufficient, though there be variance in the circumstantial Form, *Bendl. 144, 145.*



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All Statutes Merchant and of the Staple shall within six Months after the acknowledgment thereof, be entred in the Office of the Clark of the Recognisances; and it ought to be brought within four Months to enter a true Copy, or else it shall be void against Purchasers *bona fide*, and it must be enrolled within six Months, 27 *Elix.* c. 4.

A Statute is to be shewed in Court of *B. R.* or *C. B.* when its to be extended, or on Return of *Capi Corpus*, else the party will be discharged, tho it be lost, 37 *H. 6.* 6, 7.

On a Statute Merchant the Conisee may bring Debt on the Stat. and wave all other proceedings; or he may have Execution after this manner: He must bring his Statute to the Mayor, &c. and they are to imprison him; if he cannot be found, they are to certifie the Record in Chancery, and if they refuse to do it, they may be compelled there-to by *Certiorari*; and upon a *nihil* returned upon a *Testatum est*, he may have Process in another County. *Aliter* of Goods, and he shall have a *Cap.* directed to the Sheriff, and this to be returned in the *C. B.* or *B. R.* if he be returned *non est inventus*, his Lands shall be extended.

Upon a Statute-Staple, or upon Recognisance founded on 23 *H. 8. c. 6.* the Body, Lands and Goods may be taken together; and this Writ on these Statutes are returnable in Chancery, and not in *B. R.* or *B. C.* as a Statute-Merchant is.

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Recognisances in Chancery, Vid. supra Statuts.

C*apias* lies not on a Recognisance in Chancery, but only a *Scire Fac. per Garwy, Telvorton and Popham, Telv. 42. Weaver and Clifford. So Cro. Eliz. p. 576. Conier's Case, but in Ornel and Pastons Case, Cro. Eliz. p. 164. adjudged contra, and that it lies after a Scire Fac. and two Nibils returned. And per Windham in Dormers Case, 1 Keb. 456. a Capias lies on a Recognisance in Chancery, the Presidents are so; but in Grimston and Wades Case, 3 Keb. 221, 229. The Court conceived no Capias lies on a Recognisance in Chancery.*

Debt on a Recognisance is brought in the Petty-Bag Office, the Court of *B. R.* upon motion would not alter the Plea, for if the Issue be joyned in the Petty-Bag, you must try it, *Stiles p. 412. Turner and Trapes.*

A Verdict on a *Scire Fac.* on a Recognisance in Chancery, and Judgment *pro Grimston.* *Grimston* brought a *Latitat* in the Kings Bench on the Recognisance. The Defendant put in Bail, and prayed to be discharged on common Bail, because there being a Verdict on *Scire Fac.* no *Latitat* can be sued. *Per Hales,* no *Latitat* can be sued hanging the *Scire Fac.* for a *Scire Fac.* is an Action and may be so pleaded to the Debt to be depending. But after Judgment entred Debt lieth thereon, or upon the Recognisance alone, and the Rule for special Bail was discharged, 3 *Keb. 221, 229. Grimston and Wade, Vid. Lit. Rep. p. 89, 90.*
That

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That a *Scire Fac.* is not an Action, but an Execution, *Arguendo in Melvin and Reeves Case.*

If a Man be bound in a Recognizance to pay 100 *l.* at five several days, presently after the first day of payment he shall have Execution upon the Recognizance for that Sum, and shall not tarry till the last be past, for that it is in the Nature of several Judgments, *Co. Lit. fo. 292. b. Aliter of a Bond.*

More Recognizances are not sealed, but enrolled they must be.

In a Recognizance in Chancery the Process is *Scire Fac.* and this being returned with a *Nihil*, another *Scire Fac.* which being so returned also, he shall have a Judgment, and may have a *Levar.* (but no *Capias*) 8 Rep. 141.

The Transcript of a Recognizance in Chancery came into the B. R. and was not allowed there to have a *Scire Fac.* on it, 5 Eliz. Dyer 217. So in C. B. the Goods only which he had at the time of the Execution awarded, will be subject to Execution.

Upon a Recognizance in Chancery Execution shall be of the Moiety of the Lands.

The Execution by this, is by *Scire Fac.*

Bail. Recognizance.

The Nature of it.

THE Recognizance is conditional (that is to say) to render his Body to Prison if he were condemned, or to pay the Condemnation, *Jones* 138. The end of the Bail is not only to bring the

the Body, but that he come subject to the Court according to the meaning of the Bail; (and therefore Bail cannot render the Body of the Defendant after Writ of Error brought by him, *Qu.*) for the Entry in the discharge of the Bail must be, that the Defendant *reddidit se* to the Court to be in Execution, if the Plaintiff will, which cannot be so in that Case, *Hob. p. 116. Wicksteeds Case.*

The Bail in the Common Bench is always in a Sum certain according to the debt or damages in the Writ; but in the Kings Bench there is not any Sum mentioned, but to pay whatever the Principal shall lose, *1 Keb. 18. Cro. Jac. 645. Sir John Apesley's Case.*

The Words of the Bail are conditional, *scilicet si contingeret prædictum Defendentem debita & damna ill præfat. Querenti minime solvere, aut se prisonæ non reddere, &c.* *5 Rep. Hoe and Marshals Case 70. b.*

Special Bail by Recognisance was (as the manner is) that *F. & B. concesserunt & uterque eorum concessit*, that the said debt and damages shall be levied upon them, if the Defendant do not pay, *aut se prisonæ Marr. doth not render, Siderfin p. 339. Gee's Case.*

The Recognisance in the disjunctive, to render the Body to Prison or to pay, *&c.* By death the one becomes impossible, and so shall excuse the other, *Jones p. 29. Winch p. 61. Sparrow and Sowgate.*

Recognisance to have the Plaintiff in Chancery *ad standum juri in hac parte*, and that the Plaintiff shall prosecute with Effect, though he doth not shew the Plaintiff did not appear in Chancery

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at the day (for the Condition here is parcel of the Recognizance) which is one of the Conditions; for the words in the beginning include all, as well the Course of the Prosecution as the Effect of the Suit, *Yelv. p. 59. Cro. Jac. 69. Barnes and Worlych.*

Form del Mainprise en Det, Vid. Rast. Entr. 177. b.

Process. Scire Fac.

After Judgment a *Cap.* is awarded against the Defendant, and upon a *Non est inventus* returned, they awarded a *Scire Fac.* against the Bail. *Capias* must be delivered to the Sheriff before a *Testatum*, 2 *Keb. 424. Robinson's Case.*

A *Latitat* is taken against two, one is taken and puts in Bail in *Michaelmas* Term, and afterwards the other is taken, and he puts in Bail in *Hill* Term; it was prayed that the Bail of *Michaelmas* Term might be taken off the File of that Term and put upon the File of *Hill* Term, for otherwise the Plaintiff cannot proceed against them jointly upon Bail put in in several Terms, and it was so done, *Noy p. 90.*

Scire Fac. against the Bail; the *Scire Fac.* recited that Judgment was given against the Principal in Debt, but mentions not therein that the *Capias* was awarded, yet *per Cur.* it is good; it may be omitted or recited, *Cro. Jac. 97. Justice Williams versus Vaughan.*

Per Cur. If one be arrested in this Court and puts in Bail, and after the Plaintiff recovers, and the Defendant renders not himself according to Law

Law in safeguard of his Bail, the Plaintiff may at his Election take Execution either against the Principal or Bail: But if he arrests the Bail, tho he had not full satisfaction, yet he shall never afterwards meddle with the Principal: But if two be Bail, and one is in Execution, yet he may also take the other; but if the Principal be in Execution, he cannot take the Bail, *Cro. Jac. 320. Higgins Case.*

When the Plaintiff in the Action hath Judgment, he hath Election to sue a *Scire Fac.* against the Principal upon the Judgment, or against the Bail and Principal jointly upon the Recognisance.

Scire Fac. brought against three Bails upon a Recognisance acknowledged by them and the Principal jointly and severally; and upon Demurrer the Writ was abated, because this being founded upon a Record, the Plaintiff ought to shew forth the variance from the Record, as that one is dead, *Allen p. 21. Blackwel and Ashton.*

By the Course of the Court a *Scire Fac.* against the Bail must have seven days between the *Teste* and the Return; else all Proceedings after are void, and one cannot be taken out returnable more, and the other within less than seven days, *1 Keb. 182. Gifford and Smith.*

Bail in B.R. by *John Bennet Esq.* and the Declaration was on a Recognisance by the Name of *John Bennet Gent.* and on *Nul tiel Record* of the Recognisance by *J. B. Esq.* *Per Cur.* it is all one Name, and the Court takes no notice of Heraldry here, *1 Keb. 293. Bennet and Dean.*

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Scire Fac. on a single Recognisance of Bail was excepted to, because returnable at a day certain; and so agreed by *per Cur.* to be quasht, and the party left to a new *Scire Fac.* or to Debt on Recognisance. Where there is a Condition, it may be returned at a day certain, and so may a *Scire Fac.* to revive a Judgment, 2 *Keb. p.* 396, 397. *Allen versus the Manucaptors of Cutler.*

Debt lies on the Recognisance of Bail, 3 *Keb.* 707, 734. *Miles and Bateman*; but not before a *Cap.* and second *Scire Fac.* returned and filed; on Judgment in Term *Cap.* may be at any time on Rule four days after Judgment.

W. recovered against *B.* in Debt, and *B.* was brought to the Bar by *Habeas Corpus* procured by his Bail, and the Plaintiff prayed he might be committed in Execution, and also the Bail, that he might be received in their discharge; but *B.* having brought a Writ of Error, it could not be, hanging that, *Hob.* 116. *Wicksteds Case.*

The *Scire Fac.* was to shew cause why Execution *si sibi viderit expedire* (not saying) *feri non debet.* *Per Cur.* it is ill, and it is not amendable, 3 *Keb.* 190. *Mannel and Colclowe.*

After the Return of the second *Scire Fac.* it is too late to bring the Principal in, and that is the reason that in such case a Writ of Error for the Bail to reverse the Judgment against the Principal.

Debt against the Principal, and Judgment on *Nihil dicit*, but no *Ca. sa.* issued against him; afterwards two *Scire Fac.* were taken out against the Bail, and two *Nibils* thereon returned, and on that Judgment given against the Bail: The Judgment is erroneous, but the Bail cannot bring

a Writ of Error, *causa qua supra*; but he shall have an *Audita Querela*, *Stiles* p. 323, 288. *Barcock* and *Thompson*. When the Judgment is grounded upon a *Scire Fec.* the Bail is remediless, 2 *Keb.* 51. *Reynolds* and *Duel*.

There ought to be a *Cap.* against the Bail, before he can be charged, and it ought to be shewed that the *Capias* was returned and filed against the Bail, 3 *Bulstr.* p. 341. *Calf* and *Bingly*.

If the Principal be dead before the Return of the *Capias*, this must be avoided by an *Audita Querela* in Judgment against the Bail, 2 *Keb.* 51. *Reynolds* and *Duel*.

The Course of the Kings Bench is, that Default ought to be assigned in the Principal upon the Return of the *Capias* before the Bail shall be charged; (so in *Com. Banc. Qu.*) which cannot be if the Principal be dead. If the Principal render his Body, though the Plaintiff refuse to take that, yet that is a discharge of the Bail, *Winch* p. 61. *Sparrow* and *Sowgate*.

How and when the Bail is discharged; and of the rendring the Principal, and the time of doing it.

THE rendring of the Principal to Prison is no discharge of the Bail till the Bail-piece, which remains with the Secondary, be discharged, &c. 2 *Keb.* p. 2. *Booth* and *Nortrop*.

One may plead *reddidit se* well enough without averring *prout patet*, &c. for that is only filed with the Bail-piece entred into at the Judges Chamber, upon which the Secondary writes a *reddidit*

didit se, and so the party goes to the Marshal into Custody, and thence returns to the Secondary, and he enters a *Committimus in exonerationem manucaptorum*; and if this Render be before the Return of the second *Scire Fac.* on the Bails Recognizance, it may be well enough pleaded, *prout patet, &c.* and this is the Course of the Court; 2 *Keb.* p. 237. *Anonymus.*

Per Rolls, Out of Indulgence to the Bail, it hath been the use of later times, that if the Bail do bring in the Principal before the Return of the second *Scire Fac.* which was taken out against the Bail, thereupon to discharge the Bail: But anciently it was not so; but then it was counted too late to bring him in, *Stiles* p. 134. *M. 24 Car. 1. B. R. Quaterman's Case.*

The manner of Entry upon the yielding of the Body upon the Bail; and if the party or his Attorney be present, he must make his Election to take him in Execution or refuse him, whereof Entry is to be made. *Qu.* If he may after take him by *Co. sa. Hob.* p. 210. *Welby and Canning.*

Judgment against a Bail on *Scire Fac.* which was sued out, and two *Nichils* returned after the Party had rendered himself in Execution on the first Judgment. *Scrogs* moved to have the said Judgment set aside: *Per Cur.* there is cause of an *Audita Querela*; but otherwise no remedy. But the Attorney ought not to sue any *Scire Fac.* against the Bail, after the Bail-piece discharged, but before, he may, 2 *Keb.* 475. *Goreham and Boxham.*

On affirmance of Judgment against the Principal: *Jones* prayed the Bail may render the Principal before any *Scire Fac.* which the Court granted;

ed; and his Render here is a Render below the Recognizance being removed; and it may be done before any Judge in discharge of the Bail, 2 Keb. 635. *Bodam's Case*.

Gardner prayed that the Principal may be accepted to render himself, there being no *Capias* issued against the Principal, yet a *Sette Fac.* and two *Nichils* against the Bail are returned. *Set non allocatur*; this is cause for an *Amplius Querela*. And were there a *Scire Fac.* returned, the Defendant may plead it; but the Bail cannot otherwise be relieved, 2 Keb. 536. *Staunton's Case*.

Duport recovered Debt against *Wildgoose*: Upon this a *Capias* issued out against *Wildgoose*, and the same returned, and before it was filed a *Scire Fac.* issued out against the Bail; the Bail for his discharge did suggest an Action against *Wildgoose* the Principal, and had his Body in Court; and being in Court he moved to have *Wildgoose* delivered in Execution for the Debt of *Duport* in discharge of himself, in regard that if he should die before next Term, he could not plead this to the *Sette Fac.* but should be then charged with the Debt, which was granted. Note, that *Duport* did not intend to pray the Body of *Wildgoose* in Execution for his Debt, though present in Court, but his purpose was to have had his Surety in Execution for the same; the Bail perceiving this, for prevention did bring the Body of *Wildgoose* into Court, and prayed him to be committed in Execution for the Debt in exoneratorem of him, which the Court did, (2 Bulstr. p. 362.) *Duport* and *Wildgoose*.

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Capias must first be awarded against the Principal, before *Scire Fac.* against the Bail; for the Recognisance is, that the Principal should render himself, &c. which is intended upon Process awarded against him, *Cro. Eliz.* 597. *Hobs* and *Tedcastle*.

The Mainpernors brought Error, because there was not any *Cap. ad satisfac.* awarded against the Principal before the *Scire Fac. Per Cur.* a Writ of Error lies well upon the Statute of 27 *Eliz.* but being certified upon diminution, that a *Ca. sa.* had been awarded, the Judgment was affirmed, *Cro. Eliz.* p. 730. *Cokerin's Case*.

One was bound by the Chief Justice to appear in *B. R.* the Court was moved to discharge him of his appearance, because he was before the day arrested and imprisoned at the Suit of another, and it was done, 1 *Bulstr.* 170.

Scire Fac. against the Bail for Non-appearance of the Principal, and it is not mentioned that Process was awarded against him, but that it was prayed, & *ei conceditur*, but it is not *ideo præceptum Vicecomiti*, &c. as it ought to be, and although he that was Bail doth not afterwards appear, this might be without Process, and so not good, *Cro. Eliz.* p. 177. *Herd* and *Burflow*.

The Bail cannot render the Principal on the day of the Return of the second *Scire Fac.* though before the Sheriff hath actually made his Return; and this is the Pleading of the Render that such a day *ante retornum*, and after *Nul tiel Record* pleaded the Bail cannot take advantage of this Render, 1 *Keb.* 450, 456. *Hooper* versus the *Mainpernors of Gibbon*.

The Bail must render the Principal sitting the Court the day of the Return of the second *Seire Fac.* So it is on a Declaration by the by, which must be sitting the Court the last day of the Term, 1 *Keb* 899. *Nicholas and Stokes.*

Judgment was given against the Principal, and after a *Seire Fac.* is brought against the Bail, who appeared and pleaded *Nul tiel Record* of the Judgment given against the Principal, and on the day given for bringing in the Record, the Principal rendered his Body in discharge of the Bail, *Qu.* if he might, *March Rep.* p. 154. pl. 223. The Condition of the Bail is, that they render his Body indefinitely without limiting any time in certain when they shall do it, or pay the condemnation; and by some, if they plead such a Dilatory Plea as this, they have thereby waved the benefit of bringing in the Body, and by this trick the Plaintiff should lose all his Costs of Suit which he had expended in the Suit against the Bail.

Judgment against the Principal in *B. R.* upon this Judgment a Writ of Error is brought in the Exchequer-Chamber according to the Statute of 27 *H. 8.* Hanging this Writ of Error, the Principal *reddidit se prisonæ in exoneracione* of his Bail, the Bail may plead this in their discharge (the Record of the Bail is a distinct Record of it self) hanging the Writ of Error, the Bail may bring in the Body of the Principal at any time when he will, but he shall not be prayed in Execution before Judgment be affirmed or disaffirmed: Before the Return of the *Seire Fac.* against the Bail the Principal renders himself, and hanging the Writ of Error, dies, by this the Bail is discharged, 3 *Bulstr.* 341. *Calf and Bingly, Stiles and Seagar, Hobbs and Doncaster* cited there. A

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A *Committitur* (though no Judgment) must be entered hanging the Writ of Error; but if Judgment be affirmed the Party must pray to have him in Execution, *Jones p. 128. mesme Case.*

At any time before the *Capias* awarded, if the Defendant dye, this dischargeth the Bail; for the Recognisance is conditional, *scilicet*, to render his Body to prison if he were condemned, or to pay the Condemnation: And before a *Capias* he is not bound to render his Body, and therefore by the Act of God being impossible by death to render his Body, the Bail is discharged. And before *Capias* awarded the Principal is not bound to take out Execution by *Elegit* or *Fieri Fac.* as well as *Capias*, *Jones Rep. p. 138. Calf and Bingly.*

Pleading and Execution.

IN *Scire Fac.* or Recognisance against the Bail; the Defendants Plea was *venit & dicit, &c.* Per Cur. he must say, *venit in propria persona* or per *Attornatum*, and neither shall be intended, especially this being after a Demurrer, though general, 2 *Kebl. p. 388. Bolton and Clark.*

When *Scire Fac.* issues upon the Recognisance, the Bail and Principal have two ways to defeat this, either by tender of the Body of the Principal, or by Plea; and if at the Return they appear by Attorney they have chosen to avoid the Recognisance by Plea, 2 *Rolls Rep. 382.*

Scire Fac. against C. as Bail for D. and shews he had such a Term Judgment against D. and that

that he did neither render the Body nor satisfy the Debt. The Defendant pleads, *D. came in to Court and rendered his Body to the Fleet in Execution, and in discharge, &c.* and that the Plaintiff did refuse to take him in Execution, and the Plaintiff denied yielding of the Body, and so Issue: *Per Cur.* it is not well pleaded; for the yielding of the Body being an Act in Court and in discharge of his Bail which is of Record, must be it self of Record, and therefore ought to be concluded, *prout patet per Recordum, Hobart p. 210. Welby and Canning.*

In *Scire Fac.* against the Bail, they plead *reddidit se* of the Principal before the Return of the second *Scire Fac.* (*viz.*) 11 May. The Plaintiff prays Oyer of the *reddidit se*, and the Return which was the 6th of May. The Defendant demurs; Judgment *pro Quer.* 2 Keb. 542. *Turner and Luston.*

In *Scire Fac.* against Bail, or Judgment in Debt on Oyer of the Judgment: The Defendant demurred, because *Scire Fac.* is of a Judgment or Bill in *Michaelmas* Term, whereas the Bail appears to be in *Hillary*; but the Bill being against the Defendant as *in Custodia*, the Bail may be at any time; and heretofore the Bail was never put in before appearance, as now used. But in *B. C.* Bail is precedent to the Original in *Habeas Corpus* and is conditional to appear to the Original in two Terms, 3 Keb. 124. *Segar and Brome.*

Executor brought *Scire Fac.* against the Bail, and declares that the Plaintiff did recover, and that afterwards the Plaintiff dyed, the Defendant not brought in by them. The Defendant pleads

no *Capias* was sued out, by the Testator; a good Plea, 3 *Keb.* 190. *Mammel and Coltsowe*. The Plaintiff cannot have a *Capias* without a *Scire Fac.* *Qu.* And if the Defendant principal dye before the return of the *Capias*, the Bail are discharged; but not so on death before a second *Scire Fac.* Yet *Cro. Jac.* p. 97. Justice *Williams* against *Vaughan*. The Defendant in *Scire Fac.* pleaded the principal was dead before the *Scire Fac.* brought: ill Plea; because he alledgeth not when he dyed, nor that he dyed before the *Capias* Awarded: and if once on a *Capias*, *non est inven-tus* is returned, the Recognizance is forfeited, because there was default in the party; and though it be usual if the principal render his Body upon the first *Scire Fac.* to accept it, yet that is of grace, not of necessity; therefore the death at the time of the *Scire Fac.* brought is not material, if he were alive at the *Capias* returned, *Cro. Jac.* p. 165. *Timperly and Coleman*.

If the principal dye before the *Capias* returned, the Bail may be discharged, but never where he dyeth after, though before the return of the first *Scire Fac.* for hereby the Plaintiff is put by his debt, and the Executors may be insolvent, 2 *Keb.* p. 127. *Coopers Case*.

Scire Fac. against *B.* and others, as Bail for *P.P.* being Condemned, and not rendring his Body to Prison. *Scire Fac.* was brought against them, upon this Recognizance they pleaded, that *P.* such a day, before the day in the Recognizance, paid the Mony; this is a good Plea in it self, for the Recognizance, as to them is but an Obligation upon a Condition, upon which they might well

well plead performance; but the party in the *Scire Fac.* upon this Recovery cannot plead it, except satisfaction be acknowledged on Record; for by *nude* payment he shall not avoid matter of Record, *Cro. Eliz.* p. 233. *Brunckborns Case.* *Cro. Eliz.* 31. *Ordway.*

Manucaptors in *Scire Fac.* plead, that the principal was taken by *Capias*, and detained till he paid the Money; payment is a good Plea, but no place of payment being alledged, its ill, and Judgment *pro querente*, 2 *Keb.* 577. *Farrel and Steen.* *Mod. Rep.* 14. *Mesme Case.*

Payment before the return of the *Scire Fac.* by the principal, is no Plea; yet before the Writ of *Scire Fac.* brought, it is by the Bail. Bail pleads payment by the principal; before the *Scire Fac.* *viz.* the same day: after *Capias* taken out, its no Plea, nor saves the Recognizance, 3 *Keb.* 349. *Barford and Peel.*

In *Scire Fac.* Bail pleads, that the principal had entred himself before *Tbo. Twisden* Justice, &c. in discharge of his Bail, and the entry was, *Quod reddidit se in exoneratationem manucaptorum, & hoc Paratus est uerificare:* The Plaintiff demurs, because it should be, *prout patet per Recordum.* Presidents are both ways, *Siderfin* p. 216. *Middleton* and the *Manucaptors* of *Silver-ster.*

P. M. was Bail for the Defendant, and before any judgment given, the Plaintiff releaseth to *P. M.* all Actions, Duties and Demands; afterwards Judgment was given against the Defendant, and upon his default *Scire Fac.* issues against *P. M.* who pleads the said General Release. The Plaintiff demurs,

nam. *Per Cur.* This Release shall not bar the Plaintiff, for the Words of the Bail are conditional, *Scilicet si contingeret predict. debita & damna illa præfat. querenti minime solvere, aut se prisonæ non reddere, &c.* and its not any duty certain till Judgment given; and note, diversity between a duty certain upon condition subsequent, for this may be released before the day of the performance of the Condition, and a duty uncertain at first, and upon condition precedent to be made certain afterwards; this in the mean time is but a meer possibility, and may not not be released; this Recognizance doth not create a duty presently, but shall produce a duty after on a contingency, 5 Rep. 70. *Hoe and Marshal.*

Audita Querela by the Bail after judgment against him for debt on *Scire Fac.* because he was within Age at the time of the Bail; and by the *Audita Querela* he was discharged; cited in Sir *John Appleys Case*, Cro. Eliz. 645. *Telvertons New Book of Entries*, p. 87. p. 155. *Markam and Turner.* He cannot plead his Infancy to the *Scire Fac.* for this Suit goes in affirmance of the Recognizance, and demands Execution of this at the day of the second *Scire Fac.* The Bail pleads *multiel Record*, and then brings the Body of the principal into Court, and prays that his Body may be taken in Execution. *Per Cur.* if the Bail before or at the return of the second *Scire Fac.* bring in the Body of the principal, his Body shall be put in Execution-only; but here they have pleaded, and therefore if the party Plaintiff do not pray to have the Body in Execution, he is not compellable to take him, 2 Rolls Rep. 367. *Cage and Doughby.*

Second *Scire Fac.* is joint against the Bail. *Capias* may issue out against one only; for the nature of the Recognizance is not changed by the judgment in the *Scire Fac.* brought upon this, but that the Execution may be joint or several, according to the Recognizance, although the *Scire Fac.* was joint, *Siderfin* p. 339. *Gee* versus *Sir Francis Fane*.

If three bind themselves jointly in a Recognizance, Execution must go against them all; and if they are bound severally, there if the *Scire Fac.* be against all, the Execution must be so too; for by the Judgment they have made their election, 2 *Siderfin* p. 12.

Capias against the Principal and Judgment; and after *Scire Fac.* against the Bail, and Judgment thereupon; the Plaintiff cannot take out one Execution of *Scire Facias* against the Goods and Chattels of the principal and Bail, for there ought to be several Executions upon the several Judgments, *Stiles Rep.* p. 290. *Newton* and *Goddard. Trin. 1651. Banc. sup.*

Removal, Error, Hab. Corpus.

IN *Scire Fac.* against Bail, on removal of the principal by Error; the Defendant pleaded the Writ of Error is yet depending (this was on Bail below) no *Scire Fac.* will be against the Bail, especially out of an Inferior Court, till the principal be determined. *Scire Fac.* cannot be until Judgment be affirmed, 3 *Keb.* 396, 424. *Caul* and *Bezar*.

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Debt brought in Inferior Court of Record, and issue *pro Quer.* and Judgment given and had against the Manucaptors, and Error brought in *re-ditione judicii*, and the Record and Plea removed to this Court, but not the Recognizance nor Judgment against the Manucaptors; *per Doddridge*: they have well done in removing only the Record and the Judgment against the principal, and that they may well proceed to Execution; and if judgment was not had against the Manucaptors, after the Error brought, then it ought to be removed by special Writ of Error, 2 *Rolls Rep.* 494. *Anonymous*.

A. is Bail for *B.* Judgment in *B. R.* is given against *B.* *B.* sues Error in Exchequer Chamber; there the Judgment is affirmed, and Costs assessed. *A.* shall be charged with the Judgment in *B. R.* but not for the Costs on the Writ of Error, *Noy* p. 18.

The Defendant was Bail in Inferior Court, in Action of Debt. *Scire Fac.* against him, because the Principal did not render nor pay: The Defendant pleaded, that after the first Action brought, and Bail found, the Cause was removed by *Habeas Corpus*, and new Bail here accepted; and afterwards the Cause was remanded by *procedendo*, and then Judgment given against the Principal. The Question was, if the old Bail be discharged by the Record removed? *Per Cur.* If the Bail be here Recorded, so as the Court is fully possess'd of the matter, and the Term is past, there the old Bail is absolutely discharged; but if in the same Term the Record is remanded by *procedendo*, it is as if it never had been removed, and there is no Record of the

the removal thereof, and the matter doth rest in the inferior Court, *Statu quo prius*, the first Bail is revived, 2 *Bulstr.* 287. *Cro. Jac.* 363. 1 *Roll* 64. *Beston and Buller*.

Mainprise or Recognizance may be taken before an Action brought, where the Cause is removed by *Habeas Corpus*, and so is the course in *B. Com.* The usual and best course to remove the Record, is by *Mittimus* out of Chancery, *Cro. Jac.* p. 97. *Hargrave and Rogers*.

Judgment is given in *B. R.* against the principal, and afterwards by *Scire Fac.* against the Bail: Principal and Bail cannot join in a Writ of Error upon these several Judgments; and the Bail cannot have a new Writ of Error by himself, *Quod coram vobis residet*, because the *Scire Fac.* is none of the Actions wherein the Writ of Error is given in the Exchequer Chamber, *Hobart* p. 72. *Forrest* and Sir *James Sandland*. Judgment is in *Scire Fac.* which is a Judicial Writ, and it is not expressly named in *Stat.* 27. *Eliz.* *Tel.* p. 157. *Prowse and Turner*.

Judgment is given in the *Scire Fac.* upon the Recognizance; Error was brought upon that Judgment, and the Judgment affirmed: Afterwards a Writ of Error was brought upon the principal Judgment, which was reversed: hereupon *Audita Querela* is brought. *Per. Cur.* the first Judgment reversed, is no reversal of the Judgment in the *Scire Fac.* because it is a collateral Judgment by it self; yet it is a good cause for *Audita Querela*, for it is *quasi* dependent on the first Judgment, and the first Judgment is the cause that he is charged by this Recognizance, and its but reason the Bail should

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should have remedy to be discharged from the Execution, *Cro. Fac. p. 645. Sir John Appley and Ive. 2 Roll. Rep. 354. Legris Case.*

Action was for 23 *l.* 18 *s.* The Bail on Recognizance was 23 *l.* 18. Judgment against the principal, and *Scire Fac.* against the Bail for 23 *l.* 10 *s.* it was held Error for this mistake, *Cro. Eliz. p. 855. Kilborn and Trot.*

Judgment was given in *Scire Facias* against the Bail, that the Plaintiff shall recover *super recuperationem prædictam*, where it should be *super recognitionem prædictam*; No Writ of Error lyes in Exchequer Chamber, *Causa qua supra*, neither in this Case in the Kings Bench, for this is no Error in process, *i. e.* where one process is taken for another; but the Error is only in point of Judgment, and no remedy but in Parliament, *Tel. p. 157. Prowse and Turner.*

D. brought a Writ of Error in *Camera Scac.* and found Sureties to prosecute with effect; and for default a *Scire Fac.* was brought against him, who appears and is in Execution. *Qu.* If the Bail be discharged by the appearance of the Plaintiff in the Writ of Error, *1 Rolls Rep. 361. Asker and Downs.*

Mainpernors were in Action of Debt, *pro damnis & misis*; and *Scire Fac.* issueth *de debito & damnis*, and Judgment against the Mainpernors, and now a *Superseas quia erronee fuit*, for they were not Sureties *pro debito*. *Doddrige*, ye are put to *And. Quer. 2 Rolls Rep. 431. Cole and Yarnon.*

Scire Fac. against Bail, upon 3 *Fac. c. 8.* in a Writ of Error; the Defendant pleaded that the Principal did prosecute with effect, and that the Judgment

Judgment was reversed; he ought to plead *prout patet per recordum*, and not *hoc paratus*, &c. 1 Keb. 185. *Maire and Spencer.* and p. 318. *Boreman and Hammond.*

The Bail pleads the Recognizance was on Condition to prosecute Error, and alledgeth performance; the Plaintiff shews that Judgment was affirmed *prout paset* by Record, and saith not *unde petit debitum* or *executionem*; this being specially alledged as form in demurrer, is ill, 2 Keb. 581. *Barret and Millward.*

In Bail upon a Writ of Error upon the Statute of 3 Jac. c. 8. Its not sufficient to tender the Body, but he ought to pay the Debt, Cro. Jac. p. 402. *Austen and Monk.*

The not assigning of Errors is a breach of the Recognizance to prosecute with effect according to the Statute 16 and 17 Car. 2. c. 8. *Siderfin* p. 294. *Cooper and Price.* But if the Party will come in and tender the principal Debt and Costs, the Court will relieve him, and not suffer the Plaintiff to take Execution against both; and no restitution shall be of this Money on this Recognizance, in Case the Plaintiff do after assign Errors, 2 Keble 75. *Cooper and Price.*

Scire Facias on Recognizance, on 16 and 17 Car. 2. c. 8. to prosecute a Writ of Error returnable 6 May, in East-Term, the Defendant pleads that he died 18 August, and that until his death he prosecuted with effect; the Plaintiff replies, that the Defendant did not cause the Record of B. R. to be certified into the Exchequer-Chamber in his life-time; the Defendant rejoins, he was stop't by Injunction in Chancery: *Per Cur.*
the

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the Recognizance is not forfeited, *4 Keble 53, 70. Hinchman and Corbet.*

If one of the Principals renders himself, this is no discharge of the Bail, *vide 3 Keble 766, 776. Afree and Ballard.*

Defeasance, the notion of it.

It signifies to defeat or undo.

THere is a diversity between Inheritances executed, and Inheritances executory; as Lands executed by Livery, &c. cannot by Indenture of Defeasance be defeated afterwards; so if a Disfeisor release to a Disfeisor, it cannot be defeated by Indenture of Defeasance made afterwards; but at the time of the Feoffment, Release, &c. the same may be defeated; but Rents, Annuities, Conditions, Warranties, and such like Inheritances executory, may be defeated by Defeasances made either at that time, or any time after, *Co. Lit. p. 237. u.* And so may Statutes, Recognizances, Obligations, and other things executory. And of Statutes, Judgments and Obligations, it is the usual practice to make a Defeasance of them afterwards. A Defeasance is a conditional Release, and a Release is an absolute Defeasance; and the difference is as aforesaid between the Defeasance of a thing vested, and of a thing executory; as in a Feoffment of Lands, the Condition ought to be contained in the same Charter of Feoffment, or in another Deed sealed at the same time with the Feoffment, or otherwise the Condition is void, for by the Feoffment
the

the Estate of the Land is vested, and executed in the Feoffee; otherwise of Judgments; Obligations, &c. therefore the Judgment given, *Hill. 21 and 22 Car. 2. B. R.* in the Case of *Fowel and Forrest* was against Law; it was thus. Debt on Bond dated the 8th of *Apr. 16 Car. 2.* The Defendant after Oyer of the Condition, pleads, That after the making of the Obligation, (*viz.*) the same day and year the Plaintiff by his Deed of Defeasance shewed forth, had promised and engaged, that if before the last day of *J.* then next ensuing, he should not produce Testimonies to prove that the Monies mentioned in the Condition was a true Debt, and that the Defendant before the making of the said Obligation, had promised to pay this, then the Obligation should be void, &c. and avers, that the Plaintiff did not produce any Testimonies to make such proof as aforesaid; the Plaintiff demurs; Judgment was given for the Plaintiff upon this point, Because the Defeasance was pleaded to be made after the Obligation; and if it would avoid the Obligation; it should be made at the same time, *quod mirum; Sanders 2 Rep. 47.* I should rather have conceived the Reason of their Opinion for the Plaintiff to have been, for that it was an Obligation with a Condition; and the Condition is it self a Defeasance, and that a Defeasance upon a Defeasance is improper and confused; but *qu. de hac ratione.*

B. acknowledges a Statute to *S.* There was a Defeasance, That if his Lands in the County of *S.* should be extended, the Statute should be void: *Per Cur.* the Defeasance is good, and not repugnant, because its by another Deed; but the Condition

tion of a Bond not to sue the Obligation, is void,
Moor n. 1035. Trot and Spurling.

What amounts to a Defeasance, and what not.

That the Bond shall not be sued before such a
 Feast; if he be sued it shall be void, 21 *H.*
 7. 23, 30.

The Defendant pleads in Bar, That the Plain-
 tiff by his Deed indented after the making of the
 Obligation, grants to the Defendant, that he will
 not prosecute or molest the Defendant, by force
 of the said Obligation, before the Feast of, &c.
 and demurs; *Per Cur.* its no Bar, but a Cove-
 nant, and if it were that he will not sue him at
 all, that may be pleaded in Bar to avoid circuitry
 of Action, 1 *Anderson p. 307. Dowse and Jeof-*
freys.

An Obligation from *A.* of 20 *l.* to *T. B.* with
 Condition, if he paid *T. B.* 40 *s.* at such a day
 then it should lose its force; and after *B.* was
 bound to *A.* in another Obligation which was in-
 dented on performance of Conditions specified in
 an Indenture; and after the end of the Conditions
 endorsed on the last Obligation, were these words,
 Provided always, that where the said *A.* is bound
 to the said *B.* in a Bond of 20 *l.* the said *B.*
 shall not sue for the Sum comprised in the said
 Obligation, until the Condition specified in the
 said Indenture, mentioned in this present Obliga-
 tion, be performed; after *A.* sued the first Bond,
 and *B.* pleaded this matter, and averred that the
 Conditions in the Indenture are not yet perform-
 ed; *Per Englefield and Shelly, This is not a*
 V good

good Plea; the Condition to defeat another Obligation is impertinent, and the first Obligation had an Indorsement on it, which shall serve for the Defeasance of it, 26 H. 8. fol. 9.

Several Bonds were sealed for the payment of Monies; and after by Indenture the Plaintiff did agree with the Defendant, that if the Defendant should pay to *Elizabeth* the Daughter 500 *l.* and shall perform the other things, &c. that all the Obligations shall be void, and be delivered up; its was agreed; this was a good Defeasance of the Obligation; but for other Faults in the Plea, Judgment *pro Quer. Bridgmans Rep.* 116. Lee and Wood.

Memor. I *William I.* do owe and am indebted to *E. H.* 10 *l.* for the payment whereof I bind my self, &c. In witness, &c. *Memor.* That the said *W. I.* be not compelled to pay the said 10 *l.* until he recover 30 *l.* upon an Obligation against *A. B.* *Per Coke,* That which comes after (in witness) is not part of the Deed, but shall have its force as a Defeasance; but then the Defendant must plead it, 2 *Brownl. Rep.* 98. *Hammond and Jetbro.*

Per Coke, A Man without a Defeasance, may plead that the Statute was acknowledged for payment of a lesser Sum, 1 *Brownl.* 51. in *Brokfs Case.*

The Statute was defeasanced on this Condition, If *R. E.* observe, perform and accomplish the last Will and Testament of *Sir J. E.* his Father, and pay and content all the Bequests and Legacies according to the true intent and meaning of the said last Will, *Sir J. E.* deviseth Land in Capite
in

in Fee; after his death *R. E.* enters into a third part of the said Lands; by the major-part of the Judges, the Statute is not forfeit, *Jones p. 267.* *Sir Rowl. Evertons Case* in Chancery.

If the Defeasances on a Statute be by Indenture, and vary; the words of the Defeasance are the Act and Words of the Conusee only, and not of any other; and if his part of the Indenture vary from that part delivered to the Conusor, in that that it varies its utterly void, 2 *Anderson p. 58.* *Hollingsworth and Wheeler, Cro. El. 532.* *Hollingsworth and Ascare.*

H. In Aud. Querela upon a Statute surmisseth, that there was an Indenture of Defeasance, if he paid yearly for six years 50 *l.* to one *J. B.* at the Feast at *St. Michaelmas*, at such a place, &c. the Statute should be void; and avers that it was to *J. B.*'s use, and that he tendred at every of the said Feasts 50 *l.* at the place, and that *J. B.* was not there to receive it: *Per Cur. 1.* Though *J. B.* was a Stranger to the Recognizance, yet forasmuch as it is averred to be made to his use, he ought at his peril to be ready at the place every day to receive it; otherwise the Recognizance is not forfeit, when the other doth tender it. 2. Though he saith not, *nec aliquis alius ex parte sua*, was there to receive it, its good; for it ought to come on the other part, if any were there to receive it. 3. He saith at one of the days he was ready, and offered to pay it; and *J. B.* was not there *ad exigendum & recipiendum.* (so the copulative (&)) made the demand material, which needed not,) yet the surmise was good; for the matter is, whether he tendered or not, *Cro. Jac. 13, 14. Phil-*

lips versus *Rice* ap *Hugh Cro. Eliz.* 754. *vide* this Case well reported, *Yelv.* p. 38. by the Name of *Hughs* and *Phillips*.

A Defeasance unless made the same day of a Statute, and delivered *uno flatu*, cannot be pleaded in Bar, 1 *Keb.* 111. *Sir Rich. Bellifon, Qu.*

In the next place I shall shew several sorts of Bonds; as a Bond sued against the Heir, Arbitrament Bonds, Apprentices Bonds, Bonds for the Good Behaviour, &c.

Debt on Bond against the Heir.

HOW an Heir shall be charged on the Obligation of his Father; at the end of *Popham, Jones* p. 87, 155. *Bowyer* and *Rovil*, *vide Siderfin* p. 342.

It must be brought in the *debet & detinet*, *Lach.* p. 203. *Anonymus*. The Bill was on the File *debet & detinet*; but the Declaration on the Roll was *detinet* only, which could not be amended after Verdict; but leave was given to the Court to declare upon the old Bill; being within three Terms he may declare, because the Debt else had been lost, because the Heir after the Bill entred had aliened the Term, *ibid*.

Debt against an Heir in the *detinet* only, is aided after a Verdict, by the Statute 16 and 17 *Car. 2. cap. 8.* but not otherwise, 2 *Keble* 259, 290. *Siderfin* p. 342. *Comber* and *Waltoe*.

Its good against the Heir tho the Executors have Assets; he may have his Election, 1 *Anderson* p. 7. *Sir Ed. Capels Case*.

Debt lies against the Heir of an Heir upon Obligation of the Ancestor, to the 10th degree, *Noy* 56. *Dennyes Case*.
The

Obligations and Conditions. 293

The Obligee shall have a joint Action against all the Sons in Gavel-kind, 11 H.7. 12. b.

Debt against three Heirs in Gavel-kind; the Defendant pleads C. one of the Heirs is within Age. The Heir of an Heir shall be chargable with an Obligation *simul cum* the immediate Heir, and such Heir shall have his Age, Moor n. 194. Hawtree and Auger, 1 Anderson p. 10. n. 22. *id.* Case.

If a Man bind himself and his Heirs in an Obligation, and leaves Land at Common Law and Gavel-kind, the Creditors must sue all the Heirs; and if there be Land on the part of the Father, and on the part of the Mother, and both have Land by descent, he shall have several Actions, and Execution shall cease till he may take it against both; so that the Construction of Law is stricter where the Heir is charged with Warranty real, than when he is charged with a Chattel, Hob. p. 25.

Riens per descent pleaded, and what shall be Assets.

J. S. by Will deviseth his Land to his Heir at 24. and if he die without Heir of his Body before 24. the Remainder over; he attains 24. a Fee-simple descends, for no Tail shall arise before his said Age, which Tail shall never take effect, 2 Leon. p. 11. Hind and Sir John Lion, *id.* Case. 3 Leon. p. 70.

The Father bound in Obligation, and deviseth his Lands to his Wife till his Son comes to 21 years of Age, the remainder to his Son in Fee and dies; the Son shall be adjudged in by descent,

scnt, 2 Leon. 123. fol. 101. *Bashpoole's Case*.
3 Leon. p. 118.

The Ancestor was seised in Fee, and by his Will deviseth them to the Defendant, being his Son and Heir, and to his Heirs, on Condition to pay his Debts within a year, and if he failed, his Executors shall sell; he entred and paid no Debts, the Executors after entred and sold: Its not Assets in Heirs hands, for though the Heir hath a Fee, yet he hath it as a Purchaser being clogg'd with such a Condition, *Cro. M. & Car. p. 161. Gilpins Case*.

Two things requisite to bind an Heir, 1. Lien express. 2. Lands by descent. In Debt against an Heir, he is charged as Heir, and the Writ is in the *debit* and *desinet*, and its not in *auter droit*, but taken as his proper Debt; from 18 Ed. 2. till 7 H. 4. If the Executor had Assets, the Heir was not chargeable, but now the Law is changed in that Point; if the Heir sell the Land before the Writ purchased, he is discharged of the Debt in regard he is not to wait the Action of the Oblige.

Trusts descending shall be Assets by the Statute of Frauds and Perjuries; so Lands of special Occupancy, *vid. Stat.* The Defendant pleads, his Father was seised in Fee, and covenanted with J. S. &c. to stand seised to the use of himself for Life, the Remainder to the Defendant in Tail, &c. the Father had caused a Deed to be engrossed, and delivered the Deed to a Scrivener to the use of J. D. and M. so as J. D. would agree to it; J. D. died never having notice of the Deed: *Per Cur.* the Father never covenanted, because the Agreement of J. D. was a Condition precedent to the essence of the Deed, and so no Deed to raise the Uses;

Uses; *contra* the Defendant, *Moor* n. 426. *Degoze* and *Rowes Case*, *id.* *Case*. 1 *Leon.* 152. n. 211.

The Heir pleads *riens per descent*; special Verdict find, the Father was seised in Fee, and enfeoffed J. S. of the Mannor of P. excepted and reserved to the Feoffor for life two Acres only, (the Lands in question,) and after limited all to the Feoffees, to the use of the Defendant in Tail: *Per Cur.* the Lands do descend to the Son, (the Exception being void,) 2 *Keb.* p. 667, 719. *Wilson and Armorer*.

Upon *riens per descent* pleaded; special Verdict find *M.* seised in Fee *de Saliva Anglice a Salt-pan*, died, and his Son entred and was seised, and the Defendant entred as Heir *per possessionem fratris*, this is Assets by descent, and such Heir *per possessionem* is chargeable to the Debt of the Ancestor, 3 *Keb. Tr.* 28 *Car. 2.* f. 659. *Clinch and Butler*.

The Heir pleads *riens per descent*; the Defendant had levied a Fine, but because no Deed of Uses was produced at Trial, the Use was to the Conusor and his Heirs, and so the Heir in by descent, *Mod. Rep.* p. 2.

Riens per descent pleaded; Feoffment pleaded; at the Trial it appeared to be fraudulent; it need not be pleaded, but may well be given in Evidence, 5 *Rep.* 60. *Goaches Case*.

Debt vers l'Heir, he may plead in Bar a Release made by the Obligee to the Executors; and though the Deed belongs to another, yet he must shew it forth, for both of them are privy to the Testator, *Co. Lit.* 232. a.

Upon *riens per descent* pleaded, it was found he had Assets in the Cinque-ports. Judgment was general against the Defendants; and as to the Moieties

of the Lands in the Cinque-Ports, the Plaintiff must have a *Certiorari* to remove the Records into Chancery, and thence by *Mittimus* to send to the Constable to make Execution, 1 *Anderson* n.65. p. 28. *Hicker and Harrison* vers. *Tirrel*, 3 *Leon*. p.3.

The Heir pleads *riens per descent*; the Plaintiff replies, he sued a former Writ *vers l'heir*, and the Defendant was outlawed, which was reversed, and he freshly brought this Writ by journeys accompts, and avers he had Assets the day of the first Writ purchased, *Hob. p. 248. Spray and Sberiat, Cro. Jac. 589. id. Case cited.*

Debt vers l'heir; the Defendant pleads his Ancestor died Intestate, and that one *J. S.* had administered, and had given the Plaintiff a Bond in full satisfaction of the former: upon Issue joined, it was found *pro Def.* If the Obligor had given this Bond, it had not discharged the former, but being given by the Administrator, so that the Plaintiffs security is bettered, and the Administrator chargeable *de bonis propriis*, its a good discharge, *Mod. Rep. 225. Blith and Hill.*

He pleads *riens per descent*, but 20 Acres in *D. in Com. Warwic.* The Plaintiff replies, more by descent in *S. (viz.)* so many Acres; and found *pro Def.* and a discontinuance in the Record of the Plea from Term *P.* to Term *M.* assigned for Error; and *per Cur.* its Error, and not *deins Stat.* 18 *Eliz.* because the Judgment was not founded on the Verdict, but upon the Confession of the Defendant of Assets, *Telv. p. 169. Hill. 7 Jac. B. R. Molineux Case.*

The Heir pleads the Obligor died Intestate, and *J. S.* administered, and he had given the Plaintiff another Bond in full satisfaction of the former, *vide Mod. Rep. 221, 225. Blith and Hill.*

De

Declaration.

IN the Declaration is omitted (*& ad eandem solution. faciend. obligo me & haeredes meos*) it was amended, *Cro. Jac. 147. Forger and Sales. Alit.* if one declare in *debet & detinet*, where it ought to be in the *detinet* only, *ibid. Winch p. 20.*

If I declare on Obligation against a collateral Heir, the Declaration must be special; as Debt against the Brother and Heir; the Defendant pleads *riens per descent* from his said Brother; but he had Assets by descent from the Son of his Brother, but he must be charged by special Declaration; and so Judgment *pro Def. Cro. Car. 151. Hill. 4 Car. 1. Jenkes Case.*

Judgment and Execution.

DET port en Lichfield against the Heir; he pleads *riens*, &c. the Plaintiff replies Assets, but shews not in what place, whether within the Jurisdiction; Judgment was erroneous; yet *per Dodderidge*, If the Jury find the Assets to be *deins* Jurisdiction its sufficient, though not so alledged. *Q.* if Costs and Damages shall be given to the Plaintiff on such Judgment, *2 Rolls Rep. p. 48. Brown and Carrington.*

In all Courts he must shew the place of Assets, *Q. Cro. Jac. 502. id. Case. Co. Rep. 6. 46 Dowdales Case.*

Det vers l'heir, pendant le Action another Action was brought against the same Heir upon another Obligation of the Ancestor; Judgment is given for the Plaintiffs in both Actions, but the Plaintiff in the second Action obtains Judgment first; he for whom the first Judgment was given, shall be first satisfied; but if the Heir after the first Action brought had aliened, and the Plaintiff in the

the second Action commenced his Suit after such Alienation had obtained Judgment before the first Plaintiff; in that case the Plaintiff in the first Action should be satisfied, and he in the second Action not at all, *Mod. Rep.* 253. *Anonymus*.

In Det vers l'heir by Bill, after *riens per descens* pleaded, *tempore exhibitionis Bille*; the Defendant excepted at the Trial, because the Bill was not shewed; and the Plaintiff was non-suit: *Per Cur.* the Bill is confessed, and need not be shewed, 1 *Keb.* p. 793. *Rogers and Rogers*.

The Heir shall put in Bail on a Writ of Error, *per Stat.* 16 *Car.* 2. c. 2 *Keb.* 320, *Comber and Walton*.

Det vers tres Co-heirs; two confess Assets, the other pleads to Issue and is non-suited; its a Non-suit against them all, though the two have confessed; and so the Plaintiff lost his Debt, there being an Alienation before a new Original, *Siderfin* p. 378. *Blacks Case*.

He ought to confess the Assets that truly descend to him, otherwise his own Land shall be charged with the Debt, *Plow.* 440. *Pepyes Case*. *Dyer* 81. *Henninghams Case*, *Dyer* 344. *Qu.* if upon *nil dicit* or *non sum informatus*, Judgment shall be general: but in *Sc. fac. sur* Recognizance of the Ancestor against the Heir, he pleads *riens per descens*, which is false; here Judgment shall be special, for he is not charged as Heir, but as *Terre-Tenant*; at the end of *Popbam*, 1 *Car. B. R.* 153. *Bowyer and Ricots*.

After Imparance one is estopt to say that he is not Heir, (being charged in Debt as Son and Heir,) so to say he is a Bastard, 35 *H.* 6. 36, 37.

The Heir pleads *riens per descent*, besides one Acre; if the Plaintiff please he may have Execution of that one Acre; or if the Plaintiff plead that he hath Assets beyond that Acre, and it be found that he hath ten Acres more, the Plaintiff shall have Execution of the Land only, and not of his Person. Where the Heir pleads he hath nothing by descent generally, and it is found against him, the Land and all other Land that he hath, and his Body, are liable to judgment by *Ca. sa. Fi. sa. or Elegit*, 1 Brownl Rep. 254. Qu. what difference between a false Plea and *nil dicit*, 2 Keb. 343.

Riens per descent after the death of the Ancestor. *Prift.* Such Issue shall be good in a Formedon; for if he have Assets at any time, he shall be charged and barred of his Formedon intirely: in this Case it must be *riens jour de breve purchase nec unquam*, 10 H. 7. 8. b.

In *Det vers* 4 Co-heirs on several Issues on *riens per descent*, Assets was found as to one only; Judgment given against her that had Assets, *quod recuperet debitum & damna sua* generally, *ut de bonis propriis*, 2 Keb. p. 588. Cary and Brickmer versus Lock.

On *nil dicit* the Heirs own Lands and Goods shall be charged, *i. e.* a general Judgment.

The Heir pleads Lands set out for Portions, besides a Reversion of which he hath nothing; replies, a third part descended; Judgment special, 1 Keb. 156. *Cudmore* and *Lewis*.

Judgment against the Heir upon *nil dicit* shall be general, and shall extend to his own Lands, as well as to those which specially descend, *Poph.* 154. *Bowyers Case.* *Meor* n. 657. *Barker* and *Borne*.

Capias

Capias lies too against the Heir in Case of a false Plea, 2 Leon. p. 11. Sir John Lyons Case.

The Defendant confesseth he hath a seck Reversion, beyond which he had no Assets; the Plaintiff said he had *custer*, and were at Issue; the Plaintiff comes and prays leave to wave this Issue, and to have Judgment of the Reversion, *quod fuit concessum quando accideret*, 1 Rolls Rep. 57. *Anonymus*.

The Jury find the Defendant had divers Lands in Fee by descent, and shews not what; yet Judgment good; for upon his false Plea Judgment shall be given generally against him if he have any Assets; and so the quantity of the Assets is not material; but otherwise in Case of Executors, for there they must find the value of the Assets, for he must there recover according to the Assets found, 1 Rolls Rep. 234. *Everet and Sucliff. M. 13 Jac. 1. B.R.*

The Judgment and Execution shall be general, unless the Heir acknowledgeth the Action, and shews that he hath so much by descent, Cro. M. 41 and 42 El. 692. *Barker and Bourne*.

If the Heir pleads *riens per descent*, and it be a false Plea, it shall be a general Judgment against him, and no Writ of Enquiry need to be to enquire what Lands he hath, and need have no special Judgment, for the Judgment ought to be, that the Defendants Body and Goods shall be liable, and half his Lands, *Stiles p. 287, 288. Albery and Holden*.

If the Jury find he hath Lands by descent, and name them, and Judgment accordingly, its erroneous, *Stiles p. 327. Subgrave and Boswil*.

Cro. Jac. p. 236. Molineux Case. Armourer versus Willis, 2 Keb. 642, 643, 687, 719. What Bail the Heir shall put in, 3 Keb. 803. *Lawrence and Blith*.
Bonds

Bonds of Arbitrament.

I Shall not here run into the Learning of Awards, which is a curious and large Title in our Law, and of which Mr. *March* hath composed a very Methodical Treatise, but take notice of some few select Cases, which respect the Nature of such Obligations and Conditions, and of avoiding them.

An Award was, that the party shall pay unto a Stranger, or his Assigns, 200 *l.* before such a day, the Stranger before the day dieth, and *B.* takes Letters of Administration; *Per Cur.* the Obligor shall pay the Money to the Administrator, for he is the Assignee; and so if the Assignee had been left out, *1 Leon. p. 316.*

Money awarded to be paid to a Stranger, if the Stranger will not accept of the Money the Obligation is saved, *3 Leon. 62. Norwich and Norwich.*

If the Award be ill of your own shewing, then you have no cause of Action, and so you cannot have Judgment, though the Defendants Bar be not good, *Stiles 136. Wood and Clemetlee.* If the Plaintiff shews the Award, but assigns no Breach, he shall not have Judgment though he hath a Verdict; for the Obligation is not for any Debt, for this is guided by the Condition which goes in performance of a collateral thing (*viz.*) of an Award. And though the Defendant had not answered to the Breach, if it had been assigned, yet the Court ought to be satisfied, that the Plaintiff had cause to recover, otherwise they shall not give Judgment; and though the Verdict is found for the Plaintiff, yet this fault in the Replication is matter of Substance not aided, *Telv. p. 152, 153. Barret and Fletcher.*

An Obligation to perform a void Award is void, *Latch 207. 10 Rep. 131. b.*

If a Man be bound to perform an Award of Arbitrators, and they make an Award accordingly that one shall pay Money; he may have his Action of Debt for the Money, and declare upon the Award, and afterwards he may have another Action upon the Obligation for not performing the Award, *per. Car. 1 Brownl. Rep. 55.*

If one countermand the Authority of his Arbitrator, as he may, he shall forfeit his Obligation, *8 Rep. 82. a. Vynior's Cases.*

A Condition is annexed to the Award, as paying so much Rent, yet Debt upon Bond lies for Non-payment, *Crö. El. 211. Parsons and Frowd.*

A Condition to stand to the Award of J. S. The Defendant pleaded, the said J. S. had arbitrated that the Defendant should pay to the Plaintiff 10 l. and he said he had paid it to the Plaintiff's Wife, who had received it. The Plaintiff demurs, and Judgment *pro Quer.* Payment to the Wife not being good, *1 Leon. 320. Frowd and Batts.*

Recognisance to stand to the Arbitrament of A. and B. who awarded that Robins should have the Land, yielding and paying 10 l. per ann. Rent is behind. The Plaintiff brought Debt. The Defendant pleads the special matter, and concludes Judgment if the Plaintiff shall have Execution against him: *Per Car.* It is ill, for here is not any Execution of the same Debt, but an Original Action of Debt port, and he ought to conclude Judgment, *fi actio.* These words *yielding and paying* make not a Condition, for its not knit to the Land by the Owner himself, but by a Stranger (*scilicet*) the Arbitrator. But it is a good clause to make the same an Article of the Arbitrament, which the Parties are bound to perform upon the penalty of the

the Recognisance, and this Rent shall not cease by Eviction of the Land, 3 Leon. p. 58. Treshal and Robins.

An Award was that the Defendants Brother J. (for whom the Defendant was bound to perform the Award) should pay the Plaintiff 30 l. (viz.) 20 l. at the Annunciation and 10 l. at Michaelmas after, and shewed that the said J. had payd the 20 l. and as to the 10 l. he pleaded that J. died before the Feast of M. The Plaintiff demurs. Per Cur. the Bond is forfeited, because the Sum awarded by the Arbitrament is now become a Duty, as if the Condition of the Bond had been for payment of it, 2 Leon. f. 155. Kingwel and Chapman.

Debt on Bond to stand to an Award; and the Defendant pleads Nil debet. On Demurrer it was excepted; the Action is grounded on the Award, and therefore the Award ought to have been brought into Court, which is not done for ought appears here. Per Glyn, It is not necessary to produce it in Court, though he must plead the Award in Writing; for the Action is not brought upon the Award, but upon the Submission, for the Award is but the Inducement; and the Court hath nothing to do with the Award, but to see whether it be in writing or not. For a Deed, that I confess, must be produced in Court, that the Court may judge whether it bind the party or not; and you your selves have here set forth the Award in Pleading. In all Cases where things cannot be demanded but by Deed, the Deed must be produced; but here is no Deed in this Case, for an Arbitrament under Seal is no Deed, it is but a Writing under Hand and Seal, Stiles p. 459. Dod and Herbert.

Condition

Condition to stand to the Arbitrament of *J. S.* If the Defendant pleaded *Nullum fec. arbitrium*; the Plaintiff by Replication ought to shew the Arbitration in certain, and assign a Breach; for the Plea of the Defendant is so general it doth not offer any Issue, therefore the Plaintiff in his Replication ought to lay a Breach, or else there appears no cause of Action to the Court, and the offer of the Issue comes from the Plaintiff. Award is, if *J.* pay to *D.* 10 *l.* then *D.* shall assure to *J.* the Mannor of *Sale.* *D.* pleads in Debt upon this Bond, *J.* paid him not 10 *l.* it is a good Replication for *J.* to say he had paid him 10 *l.* without saying over that *J.* *D.* had not assured the Mannor, for the Plaintiff had given a direct Answer to the special matter alledged in Bar, *Yelv. 24. Baily and Taylor.* But this was after a Verdict, *Vid. Sanders p. 103. Hayman and Gerrard.*

The Plaintiff ought to assign a Breach in his Replication, because the Defendants Plea *Nul tiel award* is general; but if in such Case the Defendant plead a Release of all Demands after the Arbitrament, by which he offers a special point in Issue; there it sufficeth if the Plaintiff answer to the Release or other special matter alledged by the Defendant without assigning a Breach, *1 Brownl. Rep. 89, 90.*

Condition to perform an Agreement already set down by *J. S.* The Defendant pleads, no Agreement was made; ill Plea. *Aliter,* had it been to perform all Agreements, *1 Rolls Rep. 430. King and Perseval.*

Condition to perform an Award; they awarded the 24th of *March,* the Defendant to pay at *Mich.* following 20 *l.* The Defendant pleads the Plaintiffs Release of all Actions and Demands made to him the

the 10th of Apr. *Per Cur.* the Release is no Bar of the Plaintiffs Action. *Aliter*, if had been a Debt or Duty presently, *Cro. Jac.* 300. *Tynan and Bridges.*

In Debt on Bond to perform an Award. Defendant pleads no Award; Plaintiff sets it forth, which was, that the Defendant should pay Money, and they give mutual Releases to the time of the Award: *Per Cur.* its well enough, and all being intended to be done at one time, the Obligation is not thereby released, 2 *Keb.* 163. *Gulsthorpe and Meers.*

The Defendant in *Oyer* pleads the intermarriage of the Feme with the Plaintiff before the Award. The Defendant demurs: *Per Cur.* Marriage was her own Act, and was a Revocation of the power given to Arbitrators, 2 *Keb.* 865.

In Debt on an Obligation to perform an Award, there all the Arbitrament ought to be pleaded; but in Debt on the Award he may shew part of the Arbitrament, which is the ground of the Action, *Lit. Rep.* 312, 313. *Leak and Butler.*

After *Consilium*, on Demur, the Court gave leave to discontinue, 2 *Keb.* 618. *Roberts and Marriot.*

In Debt on Bond to perform Award or Covenant. If Money be awarded or covenanted to be paid of value, they require special Bail: *Aliter*, if to do any Act, which is of it self uncertain, as to have Trees, 1 *Keb.* 450. 2 *Keb.* 73. *Keind and Carter.*

Apprentices Bonds.

A Condition that his Son should render to C. his Master a just account *de omnibus monetis, bonis, &c.* without imbezilling any away; and that if he did imbezil any thing, upon due proof made of this,

X

he

he would pay the same to him within three Months after demand. *Per Cur.* before payment ought to precede Account and Arreares, and in this Account Proof ought to be made, and he must give notice to the Defendant, 1 *Bulstr.f.40. Cockain and Goodlage.*

On Covenant, and declared that the Defendant by his Deed shewed in Court, did covenant to satisfie him all such Sums of Mony, &c. as J. his Son the Plaintiffs Apprentice should imbezil from him within three Months after Request, and then lays the Imbezelling and Request, &c. The Defendant prays Oyer of the Deed, which was entred *in hæc verba*; and there the Covenant was to satisfie within three Months after Request and due Proof made of such embezelling. Issue wts whether he embezilled; and found *pro Quer.* Judgment was arrested, because it appears by the Entry of the Deed, that the Plaintiff ought not to have brought his Action till the 3 Months were encurred as well after Proof as after Request; whereas the Plaintiff had averred no Proof in the Declaration. And *per Cur.* the word Proof generally laid shall be understood a Proof judicial, by Jury, Confession, or Demurrer in Court; but if the form of Proof were by the Writing appointed otherwise, that should prevail; as by Witnesses, before two Aldermen, by Certificate, &c. Which Proof shall be set down in the Plea with all the Circumstances, and then it shall be given in discretion of the Court, whether that Proof were competent according to the meaning of the Writing. But in this Case, because the word Proof is left at large, and may be made in Court judicially in an Action brought against the Apprentice, before the Action brought on this Covenant made by another; it may be well in this

this Case taken of a Proof by Tryal in Court, and so is every way against the Plaintiff, *Hob. p. 217. Crookbay and Woodward, Vid. 2 Rolls Rep. 40. Lee and Finch, Cro. Jac. 488. Lee and Fidge.*

Condition was, that if he did waste his Masters Goods, and that this should be proved by Confession under his Hand in Writing or otherwise, and if within three Months after satisfaction was not made to him, then the Bond to be in force, *Per Cur.* where the Proof is general there it must be by Jury in the Action; otherwise where the Proof is with a reference to time and before persons certain, or he did confess it, in this Case, Judgment *pro Quer. Cro. El. p. 723. Cardinal and Hester, Cro. Jac. 381. 1 Rolls Rep. 222, 261. Hob. p. 92. 3 Bulstr. 55. Gold and Death, 1 Leon. n. 344. f. 206. Cro. Eliz. 236. Tedcastle and Hallywel.* Though he confesseth, yet it must be averred that he did embezzil, *2 Rolls Rep. 40. Vid. Cro. Jac. 488. Lee and Fidge.*

The Contract or Indenture for having or retaining an Apprentice contrary to the Statute is void; but if such Apprentice give Bond to deliver up a true and just account of Merchants Wares, the Bond is good; it being for a collateral matter the Bond is good and out of the Statute, *3 Bulstr. p. 179. Bennet and Benfield.*

In some Cases it is Wisdom to pray the Court leave to discontinue the Suit, otherwise the party would be utterly barred of his Bond, *Cro. Jac. p. 488. Lee and Fidge.*

A Bond not to use a Trade in D. if good, *Vid. prior.* A Stranger is bound that such an Apprentice shall transport Wares; make Accompts and pay Money: The Obligee releaseth by Deed to the Apprentice and

not to the Obligor. By this the Obligation is saved if the Release be made before any Forfeiture; *aliter*, if after, because the Obligation once forfeited cannot be saved by any Release made to a Stranger, 3 *Leon. p. 45. Anonymus.*

Though an Infant may voluntarily bind himself Apprentice, yet neither at Common Law nor by *Stat. 50 Eliz.* a Covenant or Obligation of an Infant shall bind him; if he misbehave himself the Master may correct him, or Justices punish him, *Cro. Hill. 5 Car. fo. 179. Gilbert and Fletcher.*

The Condition was of three parts. 1. If he well served the Plaintiff. 2. If he duly accounted. 3. If he should make satisfaction in three Months after notice. Breach is, that upon account he was found 60 *l.* polish Money in arrears, which he converted to his own use, and so not well served him, and good, for it is a Breach of the first part, for every part is several by it self, *Cro. Eliz. p. 830. Cutler and Brewster.*

Condition was, that if an Apprentice turned over should waste the Goods of his Master, the Defendant would pay what the Master is dampnified, and plead *Nul damage.* The Plaintiff sets forth Breach in wasting Goods; no notice need to be given to the Defendant. If any one undertakes for a third person he must answer for him at his peril, and the particulars of the Goods wasted need not be set forth, but say to such a value, 1 *Keb. Hill. 14 & 15 Car. fo. 467, 471. French versus Peirce.*

Condition to teach and employ his Apprentice in his House and Service in the Art of Chirurgery for eight years. The Master sends him a Voyage to the *Indies.* The Defendant pleads he did it for the better instruction of his Servant. The Plaintiff de-

mons;

mers and Judgment *pro Quer.* That the Defendant could not send his Apprentice out of England, except he went with him, but to any other part of England he may, 1 Bulstr. p. 67. Coventry and Weedal, 1 Rolls Abr. 427. sect. 2. Id. Case.

C. as Executor of C. *part Det. sur Oblig. vers S.* the Case was; The Testator had put himself Apprentice to S. for seven years, and S. bound himself to pay to his Apprentice his Executors, &c. 101. at the time of the end or determination of his Apprentiship: The Apprentice serves six years and dies; *Per Cur.* The Obligation is discharged, and the Money shall not be paid; 1 Brownl. 97. Cbeyny and Sell, Cro. Eliz. p. 723. Cardinal and Herker, About embezelling.

Bo. is for the Good Behaviour.

THE Condition of this Recognisance standeth upon two Points. 1. For appearance at the time. 2. For keeping the Peace in the mean while.

The Form of the Recognisance for the Good Behavior

Mern. quod quinto die mensis, &c. Anno Regni, &c. venit coram me A. B. Ar' uno Justiciariorum Domini Regis ad pacem nunc, &c. R. G. de, &c. in propria persona sua & assumpsit pro seipso sub pena 200 l. & H. C. de L. &c. & J. S. de, &c. tunc & ibid. in propria personis suis similiter vener. & manuceper. pro praedict. R. G. (viz.) quilibet eorum separatim sub pena 100 l. quod idem R. G. persona-
liter

liter comparebit coram Justiciariis dicti Domini Regis ad pacem, &c. ad proximam generalem Sessionem, &c. & quod ipse interim se bene geret erga Dominum Regem & cunctum populum suum, & precipue erga J. B. de C. &c. Et quod ipse non inferret nec inferri procurabit per se nec per alios dampnum aliquod seu gravamen præfat. J. B. seu alicui de populo ipsius Domini Regis de corporibus suis per insidias insultus seu aliquo alio modo quod in lesionem seu perturbationem pacis dicti Domini Regis cedere valeat quovismodo, quas quidem separatis summas 100 l. uterque prædictorum H. C. & J. S. ut prædicitur pro se ac prædict. R. G. dictas 200 l. recognoverunt se debere dicto Domino Regi de terris & tenementis, bonis & catallis suis & quorumlibet & cujuslibet eorum ad opus ipsius Domini Regis fieri & levare. Si contingat præfatum R. G. in aliquo præmissorum deficere & inde legitimo modo convinci, &c. In cujus rei Testimonium ego prædict. A. B. sigillum meum imposui, dat. &c. Dalton 370. c. 123. Kilby's Presid. 191. is more full, but to the same purpose.

And this may be done also by a single Recognisance in Latin with a Condition added or endorsed in English for the keeping of the Peace, or for the day and place of appearance at the Quarter Sessions, or in Latin.

The Obligation shall be made in the Kings Name by the words *Domino Regi*, per Stat. 33 H. 8. 39. sect. 52. And such Bonds shall be of the Nature of a Statute Staple.

Per Stat. 3 H. 7. 1. Every Recognisance taken for the Peace shall be certified at the next Sessions of

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of the Peace, that the Party thereupon may be called, and his Default, if any happen, may be recorded. The Justice of Peace must send or bring it in at the next Sessions to the *Custos Rotulorum*, whether the Recognisance were taken by his own discretion, or at the suit and desire of another. Altho the Party that prayed the Peace do not then appear at the Sessions, yet the default of the Recognisor is not thereby discharged; and the Justices may then of discretion bind him over again.

If the Recognisance be *versus cunctum populum & precipue versus A.* A. may release it either before the same Justice or any other that will certifie the Release, which Certificate being of Record will discharge it, but to release it by his Deed is nothing worth. But the Recognisance may not be cancelled, lest perhaps the Peace was broken, and consequently the Recognisance forfeited before the Release.

Therefore it will be best in such Cases to send to the Sessions the Recognisance and the Release together, and that may be done in a few Lines under the Recognisance it self, as,

Memorandum, *Quod primo die, &c. præfatus C. D. venit coram me S. L. & gratis remisit & relaxavit quantum in se est prædictam securitatem pacis per ipsum coram me versus supranominatum A. B. petitam. In cujus rei testimonium, Ego præfat. S. L. &c. dat. &c.*

If a Man be bound to the Peace, and to appear at next Quarter Sessions, and do afterwards procure a *Supersedeas* out of Chancery testifying that he hath found Surety there against all the Kings People

People for ever; this will discharge his appearance at the Sessions. And it is best for the Justice of Peace to send in, as well the Recognisance as *Superfedeas*, for perhaps the Recognisance was broken before the *Superfedeas* purchased.

The death of the King dischargeth the Recognisance of the Peace; so doth the death of the Recognisor; so doth the death of him at whose Suit it was taken. But though the Sureties die the Recognisance standeth; for if the Peace be broken after death, their Executors shall be charged with it.

In the Release of Surety of the Peace, these words are, *Securitatem pacis*; but for the good Behavior, *Securitatem de se bene gerendo*.

The Informer against a Prisoner for Felony, may be thus bound in a single Recognisance.

Kanc. ff. Memorand' Quod tertio die Apr. Anno, &c. D. E. de B. &c. personaliter coram me T. S. uno Justiciariorum, &c. ad pacem, &c. assignator constitutus apud B. prædict. recognovit se debere dicto Domino Regi 10 l. bonæ, &c. de bonis & cattallis, terris & tenementis suis fieri & servari ad opus dicti Domini Regis, Hered. & Successorum suorum si defecerit in conditione indersata.

The Condition of this Recognisance is such, where as one *A. B.* late of *G.* Labourer, was this present day brought before the said Justice by the above bounden *D. E.* and was by him charged with the felonious taking of 20 Sheep of him the said *D.* and thereupon was sent by the said Justice to the Kings Majesty's Gaol. If therefore he the said *D.* shall and will at the
next

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next general Goal-delivery to be holden in the said County, prefer or cause to be framed and preferred one Bill of Indictment of the said Felony against the said A.B. and shall and will then also give Evidence there concerning the same, as well to the Jurors that shall then enquire of the said Felony, as also to them that shall pass upon the Tryal of the said A.B. that then, &c.

A Recognifance to appear and answer for Felony.

Memorandum, Quod vicesimo die &c. R. C. de L. Gen. E. C. de &c. J. B. de &c. venerunt coram me J. H. Armig. uno Justiciariorum dicti Domini Regis ad pacem in Comitatu predicto conservand. assignat. & manuoferunt pro R. B. de &c. (viz.) Quilibet eorum corpus pro corpore quod idem B. R. personaliter comparebit coram prefat. Justiciariis & sociis ad prox. general. Sessionem pacis in Comitatu predicto tenend. ad stand. rect. in Curia siquis verum eum loqui voluerit de diversis felonis & transgressionibus unde idem R. B. judicatus existit ut dicitur, & ad respondend. dicto Domino Regi de iisdem prout debet, dat. &c.

Recognifance of Bail.

Kanc. ss. Memorandum, Quod quinto die A. D. de &c. G. H. de &c. J. K. de &c. personaliter venerunt coram nobis C. D. & E. F. Justiciariis dicti Dom. Regis ad pacem suam in Com. suo predicto conservand. assignat. & recognoverunt se debere eidem Dom. Regi modo & forma sequen. (viz.) predict. A. B. 20 l. legalis, &c. & uterque prefatorum

dictorum G. & J. 10 l. consimilis moneta, de se-
 peralibus bonis & catallis terrarum & tenementis suis
 sepealiter fieri & levare ad opus & usum dicti Dom.
 Regis hered. & successor. suorum, si default. fieret in
 performance conditionis indors.

Condition for appearance for Felony or suspicion of
 Felony.

The Condition of the Recognizance is such,
 That if the within bound *A. B.* do personally ap-
 pear before his Majesties Justices of Gaol-delivery, at
 the next general Gaol-delivery to be holden for the
 within named County of *Kent*, then and there to
 answer to our Sovereign Lord the KING for and
 concerning the felonious taking and stealing of, &c.
 (or for suspicion of his felonious taking, &c.) where-
 withal he standeth charged before, &c. and to do
 and receive, &c. and do not depart the said Court
 without licence for the same, then, &c.

If it be to appear at Sessions, say, Do per-
 sonally appear before his Majesties Justices assigned
 to keep his Peace in the within named County of
K. at the next General Sessions of the Peace to be
 holden for the said County of *T.* in the County
 aforesaid, then and there to answer, &c.

If the Party that is bound to appear on Surety
 for the Peace, be so sick that he cannot appear,
 the Justices in their discretion have forbore to cer-
 tifie or record such Forfeiture or Default, and that
 they have taken Sureties for the Peace of some
 Friends of his present in the Court till the next
 Sessions.

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If the Husband be bound that he and his Wife shall appear at such a Sessions, and that they shall keep the Peace in the mean time, &c. and at the day the Husband appears alone; *Qu.* if the Recognizance be forfeited.

A Supplicavit out of Chancery directed to the Sheriff and Justices to bind *F.* and two others to the Good Behaviour; the Sheriff returns, that the two *non sunt inventi*, and *quoad F.* that such a Recognizance was taken before the Justices, and that he had broken the Good Behaviour; and *F.* pleaded to Issue in Chancery; the Record being sent into the Kings Bench *per manus Dom. Cancellaris*; thereupon a Writ of *Nisi Prius* issued, and found for the Defendant; this Recognizance was not well certified into the Chancery, for they who take the Recognizance ought to certify it, *Cro. Jac. 669. Ford* against the *King*.

If a Man find Sureties for the Peace before the Justices of the Peace in the County, yet if the same Party come in *B. R.* and there make Oath, that he was afraid he shall be hurt by the said Party, he may have surety of the Peace there against the Party, and a *Superseas* to the Justices to discharge the Bond taken before them for the Peace and Behaviour, *Moor n. 126.*

Upon motion on Affidavit, that he was bound to the Peace for Malice; his Recognizance was discharged, *Stiles p. 364 Sir Tho. Revels Case.*

Its the Course of the Court, when any are bound over to appear in *B. R.* and in the mean time to keep the Peace, or be of Good Behaviour; the Cause is to be exprest in the Recognizance; also when ever the Court binds any Man to the Peace or Good Behaviour, its always for a year, 1 *Keble. Hill.*

Hill. 16 and 17 Car. 2. B. R. *Sandford versus A-
kinson.*

What is or amounts to a Breach or Forfeiture.

THE Surety of the Peace is not broken without
Affray made, or Battery, & *hujusmodi*, 2 H.
7. 2. b.

Words which threaten a Battery of the Body may
forfeit a Recognizance; but not to call one Lyar,
Drunkard, and to say I will make him a poor
Kirten, Moor n. 378.

If he threaten to beat him to his Face, its a For-
feiture, or if he threaten in his absence, and after-
wards lies in wait to beat him, *Keb. Inst. 615.*

If he that is bound do but command or procure
another to break the Peace upon any Man, or to do
any other unlawful Act against the Peace, if it be
done, its a Forfeiture of his Recognizance, 7 H.
7. 34. a.

There is a Surety of the Peace, and a Surety of
the Good Behaviour; the Surety of the Peace cannot
be broken without some Act; as an Affray or Bat-
tery, or the like; but the Surety *de bono gestu* con-
sisteth chiefly in doing nothing that may be cause of
the Breach of the Peace: the word Lyar, Drunkard,
&c. are not Breaches, nor entering his Close, nor
taking Goods; What is a Breach of the Peace, is a
Breach of the Behaviour, riding with War-like
Weapons, (but that is not Law now,) or in Com-
pany with riotous Malefactors, *Cro. El. 86. k. 4 Inst.*
180, 181. *Kings Case.*

In *Sc. Fac.* upon a Recognizance for the Good Be-
haviour taken in the Crown Office; the Breach is af-
signed

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signed, because he assaulted and beat one on the Way, and he saith not *vi & armis*, and for this Cause after Verdict Judgment was stayed, *Cro. Jac.* 412. The King and *Hutchings*.

Scire Facias upon a Recognizance of the Good Behaviour; Breach assigned was, That he said to a Constable in executing his Office, thou art a lying Rascal, and to a Woman that she was a Whore and a Jade, &c. The Defendant pleaded not guilty, and found for the Defendant, though the manner of speaking may be good cause in discretion, to bind one to his Good Behaviour; yet one being bound, words only which tend not to the Breach of Peace, terrifying others, or to sedition, &c. shall not be sufficient cause of Forfeiture.

Nota, In this Case the Witnesses in the behalf of the King, did not prove that these words were in disturbance of the Execution of his Office, *Cro. Car.* 498. The King versus *Hayward*.

Farther Considerations of Bonds in respect of Assignment, Statute of Bankrupt and Forgery, &c.

Assignments of Obligations. Vide Creditors as to Statute of Bankruptcy.

IF a Man assign an Obligation to another for a precedent Debt due by him to the Assignee, that is not Maintenance; but if he assign it for a Consideration then given by way of Contract; this is Maintenance, *Noy* 53. *Harvey* versus *Battel-man*, *Alit.* in Case of the King. 13 *Leon.* 234. *Souls* and *Marsh*.

Upon

Upon the Statute of 33 H. 8. cap. 39. the Case was. If Tenant in Tail of the Mannor of D. be bound in a Recognizance to J. S. which Recognizance after comes to the King by the Attainder of J. S. of High-Treason, and after Tenant in Tail dies, and the Issue in Tail alien the Lands, *bona fide*; whether the King may extend the Lands in the Hands of the Alienee: It was resolved, That if Tenant in Tail become indebted to the King by Judgment, Recognizance, Obligation, or other Specialty, and dies before any Process or Extent, and the Issue in Tail alien the Land *bona fide*, this Land shall not be extended by force of this Statute. And also that in this Case, in as much as the Debt was originally due to a Subject, it is not within the Act to charge the Lands in the possession or seisin of the Heir in Tail, or of his Alienee; for this Act extends only to Debts immediately due to the King originally, and not to those which accrew to him by way of Assignment, Outlawry, Attainder, Forfeiture, Gift of the Party or any other collateral way, 7 Rep. 21. Lord *Andersons Case*.

The Statute of 7 Jac. makes Assignments of Debts void, other than such as grow originally to the Kings Debtor, *bona fide*; it restrains Assignments of Debts which are not due to the Debtors themselves, but assigned to or by them to other Persons. The purport of this Law was, That no Debtor of the Kings should procure another Mans Debt to be assigned, which was a common practice; but a Man may assign his own Debt, tho not to his own Use; for what he may himself release and discharge, by the same Reason he may assign;

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assign; as *B.* was bound to *C.* in a Stat. of 2000 *l.* *C.* dies Intestate, his Wife administers and marries *F. F.* with others became bound to the King in 6000 *l.* *F.* and his Wife by Deed enrolled in *Cur. Ward.* assign the Statute to the King by payment of the 6000 *l.* the Assignment was good, *Hob. p. 253. Brediman and Coles. Cro. Hill. 16 Jac. p. 524. id. Case.*

A Duty which is not naturally a Debt but by circumstance only; as Debt upon Bond for performance of Covenants, or to save harmless, may be assigned over to the King for Debt; yet a present Extent shall not issue, but a *Scire Fac. 2 Leon. p. 55. Beaumonts Case.*

Debt against one as Executor, and upon fully administered pleaded, it was found *pro Quer.* who assigned the same to the King, *2 Leon. p. 67. Noons Case.*

M. indebted to *S.* by a Note in writing *per me,* but not sealed; such a Debt may be assigned to the Queen, *3 Leon. 234. March.*

An Obligation may be assigned to the King *sans* Deed enrolled, *3 Leon. p. 234. South and Marsh, 21 H. 7. 19.*

Where the King sues for a Debt assigned to him, the Obligor cannot plead *nil debet*, for by the Assignment its become matter of Record, *ibid.*

An Obligation forfeited to the King by the Statute *28 Eliz. c. 8. 1. Q.* if the King may grant before Seizure. 2. There are two Obligees, and one forfeits. *Q.* if the King shall have all the Bond, *1 Rolls Rep. p. 7, 12. Jac. B. R. Cullan and Bets.*

In Assignment of a Bond to the King, the Land shall only be liable from the time of the Assignment; but in Assignment of a Recognizance or Statute, the King shall have the Land at the time of the Judgment rendered, *Lit. Rep. p. 125. Roy versus Hanton.*

By the grant of *bona & catalla* an Obligation passeth, i. e. Paper and Wax; yet the Grantee may not have Action upon this, for that is not transferable, *Lit. Rep. 87. Dyer 25 H. 8. 5.*

If a Debt be assigned to the King, in this Case no priority of Execution, 1 *Brownl. 37.*

A Condition to save harmless for assigning a Bond, *vide* the Form, *Bridgmans* Presidents.

Clark was indebted to *A.* by Bond, and after delivers to *Andrews* certain Hogheads of Wine to satisfy the said Debt; and afterward *Clarks* Obligation is assigned to the Queen for *A's* Debt: *Per Cur.* the property of the Goods by the delivery of them to *Andrews*, before the Assignment was altered, 2 *Leon. 89. Bridget Clarks Case.*

A. was indebted to *B.* who was indebted to the Queen, *B.* assigned his Debt to the Queen; by all the Barons, Process shall be awarded out of the Exchequer to enquire what Goods *A.* had at the time of the Assignment, and not what he had *tempore scripti prædicti. fact.* 3 *Leon. 196.*

Obligation

Obligation.

Of Creditors in respect of Statute of Bankrupts, and Assignments.

Osborn and Bradshaw were Sureties pro Churchman, and had Counterbonds to save harmless; the Sureties paid the Money, and afterwards Churchman became a Bankrupt. Resolved, that they were Creditors within the Statute 13 Eliz. Cro. Jac. 127. Osburn versus Churchman.

If an Obligation be taken in the Name of another, to the use of a Bankrupt, the Commissioners may well assign that, unless the other party hath of his own Money satisfied Debts due by the Bankrupt, Noy p. 142. Catbman's Case.

Debt sur Obligation, assigned by Commissioners of Bankrupts, and doth not shew the Obligation; he need not, because he comes in by act of Law, and hath no means to obtain the Obligation. As Tenant per Statute Merchant, or Dower, shall have advantage of a Rent Charge shewing the Deed. Cro. Jac. p. 109. Gray and Fielder.

R. is indebted to S. and B. jointly; S. becomes a Bankrupt, and the Commissioners assign the Obligation to B. Q. 1 Keb. p. 167. Roylston and Ratcliff.

If I am bound to J. S. and he before Bankruptcy assigns the Bond; this is liable to the after Bankruptcy of J. S. being only sue-
A a ble

ble in his Name, 2 *Keb.* 331. *Backwell* versus *Litcott*.

In Debt *sur* Bond, the Defendant pleads before Action brought, the Plaintiff became a Banrupt: *Per Cur.* it's an ill Plea; and until an Assignment made, the Debtor is defenceless, and payment before Commission sued out is good enough; and so it is before his Debt be assigned, 3 *Keb.* 316. *Andrews* and *Spicer*.

In Debt *sur* Obligat. the Defendant pleads, that it was in trust for *Holt*, who was a Bankrupt, & *virtute Commission*, &c. this Debt was assigned to *Ashly* and *Penning*, & *aliis Creditibus*. The Plaintiff replies, It was not assigned. The Defendant demurs specially for doubleness. The Court conceived the Bankruptcy traversable as well as the Assignment; yet the Issue is well enough, 3 *Keb.* 737. *Jones* and *Bolton*.

Condition to give account to the Creditors, &c. 1 *Keb.* 815, 843. *Selby* versus *Walker*.

The Disposition by Commissioners of Bankrupts, saves the forfeiture of the Obligation. 2 *Keb.* 202. in *Robin's Case*.

I shall here subjoyn some things respecting Matters of *Tort*; as Forgery, Detinue, &c. of Obligations.

Forgery.

Forgery.

IF a Man forge a Bond in my Name, I can have no Action of the Case yet; but if I am sued, I may; tho' I may avoid it by Plea: But if it were a Recognizance or Fine, I shall have a Deceit presently before Execution. 19 H. 6. 44. cited in *Hebart*, p. 267.

The Penalty of Forging Deeds, 5 *Eliz.* c. 14. Co. 3 *Inst.* p. 171.

When the Statute saith, If any Man forge any Obligation, or Bill Obligatory, these must be intended to be Sealed. If a man forge a Statute Staple, that is, acknowledge them, or either of them in the name of another; these are Obligations within this Act, for each of them hath the Seal of the party. *Alien* of a Statute Merchant, or of a Recognizance, because they have not the Seal of the Conusor, Co. 3 *Inst.* p. 171.

Obligation of 10000 l. for the payment of 5000 l. per W. (who is dead) at three Months end. It was suspected to be forged, and on *Non est factum* pleaded, at Trial at Bar, the Testimonies were examined apart. The Jury found *Non est factum*; but the Obligation shall not remain in Court, but be delivered to the Plaintiff, *Siderfin* 15 Car. 2. B.R. p. 131. *Guillim's* and *Huley*.

Forgery may be pleaded in Bar to an Obligation; but it's no Plea to say, that there was an award in *Chancery*, that the Obliga-

tion should be void for unconscionableness,
37 H.6.13, 14.

B. was bound in 100*l.* Bond to *A.* for the honesty of his Son an Apprentice with *A.* and *A.* in the Obligation razeth out *libris*, and put in *marcs*. This is not Forgery punishable; it's not a prejudice to any but himself, for by that the Obligation is void, *Noy* 99. *Black and Allen*.

Where false Alterations shall be a Forgery within the Statute, *Co.* 3 *Inst.* p. 169.

Detinue.

IN *Detinue* the Defendant pleads, That the Obligor and Obligee did deliver it to him *sub certis Conditionibus*, and he knows not whether they be performed, and prays Garnishment and on Issue found for the Plaintiff. It was moved in Arrest of Judgment, because there was not Garnishment before the Issue, and the Issue is uncertain *sub certis conditionibus, non allocatur*; it's a Jeofail, *Cro. Eliz.* 856. *Pursand and Whityer*.

Detinue of a Bond, on *non detinet* it was found for the Plaintiff, and Damages assessed to 7*l.* and Cost 6*d.* and if the Bond cannot be restored, then they assessed for Damages besides the 7*l.* 20*l.* more; the Judgment ought to be Conditional, to recover the said Bond; or if he cannot have the said Bond, then the 20*l.* and so the *Distringas* to the Sheriff must be, to demand the Bond; and if it cannot be delivered, then the 20*l.* for

it is not at the Sheriffs choice; therefore the *Distringas Vic* for the said Bond, or 20 l. was erroneous, *Cro. Jac.* p. 681. *Peters and Heyward.*

One Executor gives up a Bond in discharge of his own Debt, and dies, the surviving Executor shall not have Detinue for it, *Cro. Eliz.* p. 478, 496. *Kelsock and Nicholson.*

Where, and in what cases, Notice is requisite to be given before the Action brought upon an Obligation, and where not, and by whom.

WHen a Man binds himself to do or perform any thing to be awarded, &c. by a Stranger, he thereby takes upon himself to take notice at his peril of all things incident thereunto for the saving of his own Bond, 8 *Rep.* 92. *b. Frances Case.* As,

Condition to perform the Award of J. S. and J. S. makes an Award, the Obligor ought to take notice thereof at his peril; for that he hath bound himself thereto, and no Notice is requisite to be given to him.

Condition to pay 20 l. within 10 days after J. S. hath rode five times in six days from *London* to *York*, and from *York* to *London*; he ought to take notice of the doing of this at his peril; for that it is to be done by a Stranger, 1 *Rol. Abr.* 463. *Herbye and Pope.*

Condition to pay 40 l. to B. within a year after B. shall marry C. he is bound to pay it within the year after Marriage, without any Notice given of the Marriage by B. for

he hath taken it upon him ; and he may have Notice by C. who is a Stranger to the Condition, 1 *Rol. Abr.* 463. *Shepherd and Fry.*

A. is bound to *B.* that *A.* shall pay to *B.* all such Monies, which by a true and justifiable Bill under the Hand of *B.*'s Attorney, shall appear to be before disbursed *per B.* or his Attorney. *B.* assigns a breach, that 24. by a true and justifiable Bill under the Hand of *J. S.* Attorney of *B.* appears to be disbursed, which *A.* hath not paid. This is a good Breach, without alledging that *A.* had Notice of this, or that the Bill was shewed to him ; for the Attorney was a Stranger, of which *A.* ought to take notice at his peril, 1 *Rol. Abr.* 467. 39. *Dewell and Wilmot.*

Bill Obligatory, to be paid within 10 days after *J. L.* went by five days undivided from thence to *London*, and alledges he did so ; & licet sapius requisitus. *Quare*, If there need any Notice, because the Act is to be done by a Stranger, and his time of Return lies as well in the Notice of the Obligor, as of the Obligee, *Cro. Jac.* p. 150. *Normanville and Pope.*

Condition to pay such Arrears as should be found on his Account before such an Auditor. Defendant pleads he did account, and was always ready to pay the Arrears, if the said Auditor had given him Notice. No Plea ; for he hath bound himself thereto, and he must take notice thereof at his peril, 1 *H. 6. 5.*

But

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But Condition to Account before such Auditors as the Obligee shall Assign, he ought to give Notice of them to the Obligor.
8 Ed. 4. 1. b.

Regularly, it is not requisite to give Notice where one is bound to do an Act by Bond.

Undersheriff covenants with the High-sheriff, to discharge and save him harmless of all Escapes of Prisoners that should be Arrested by him, or any Bailiff appointed by him, and a Bond of Performance: *Per Curiam*, The Sheriff is not bound in this case, either to give Notice to the Undersheriff of the Escape, or to make request for discharge; for the Covenant binds him to discharge at his peril, *Hobart p. 14. Sir Daniel Norton's Case.*

Condition, that if the Obligee return from beyond Sea before the 21st of April next; then if the Obligor pay unto him at Easter following 200 l. then, &c. if Obligee return within the time, he is not bound to give Notice of this to the Obligor, but he ought to take Notice at his peril, for he hath bound himself to this Inconvenience,
1 *Rolls Abr.* 463. *Eve and Dawtry.*

Condition to pay 10 l. at the day of Marriage of the Obligee; the Obligee is not bound to give Notice to the Obligor before his Marriage, at what day he will be married; but the Obligor must take Notice at his peril, for he hath taken upon him to pay it at the Day, 1 *Roll. Abr.* 461. *Beresford and Goodson's Case.*

So it is, if it be at the day of the Marriage of *W. N.* *Id. ibid.* 462.

A man is bound to *H.* to pay him 1000*l.* after that he had married his Daughter; and afterwards he married her, and brought Debt upon this Bond, and it was not averred that he had given Notice to him of the marriage, but demanded the Mony. Here is no need of Notice (the Request seems to imply Notice.) *P. 2 Car. B. R. Hodges and Moore.*

If I am bound to be Attendant upon you at every time that you shall come to the Manor of *D.* I am bound to take Notice when you come, at my peril, 8 *Ed. 4. 1. b.*

Condition was, where the Obligor is Lessee for years of the Obligee of certain Lands; if he render back the possession of the Land at the end of the term to the Lessor, his Heirs and Assigns upon request, then, &c. and after the Lessor assigns over his Reversion, the Assignee at the end of the term requests him to render back the Possession to him. He is bound to do this without any Notice given, who is Assignee, 1 *Rol. Abr.* 465. *Linghen and Paine.*

Condition to pay the Damages which shall be recovered by *J. S.* against him; there needs no Notice, 1 *Rol. Abr.* 468. 3.

Condition was to pay the Second day of *May* at the Defendant's House, giving Thirty days warning. Defendant pleads, the Plaintiff did not give thirty days Warning. The Plaintiff demurs: *First*, Because no Notice is requisite, but surplusage, the day and place
of

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of payment being certain without it. Secondly, If Notice be necessary, the Obligor must give it; to which the Court agreed, 2 Keb. 222. *Johnson and Muller*.

Condition of Obligation, is to acquit of several Bonds entred into, &c. Defendant pleads performance. Plaintiff replies, He was sued and retained, and Attorney, &c. Defendant demurs, for that the Plaintiff had not alledged to him particular Notice of the Suit *per Cur.* particular Notice is not requisite in this case, because he hath taken upon him to acquit him, *Siderfin* p. 442. *King and Aikyns*.

Where by common Intendment the thing to be paid or done cannot lye in the consance of the Conizor, there Notice is requisite.

A Man is bound to pay an 100 l. two Months after *A.* returns from *Rome*. He ought to give Notice of his Return, before *A.* can have an Action on this Bond; for he may land at *Newcastle* or *Plimouth*. Agreed *per Cur.* in *More and Hodges*, p. 2 *Car. B.R.*

If I am bound to enfeoff such persons as the Obligee shall name, he ought to give Notice to me whom he will name. 8 *Ed. 4. Arbitrement* 15.

Vide plus sub titulo, Who to do the first Act.

Who

Who is to do the first Act.

WHere the Obligor is to do such an Act by the direction of a Stranger, he ought to procure the Stranger to give the direction, *Lit. Rep.* 13, 14. *Vide supra* (parsim, & *Kelw.* p. 53. a, b.

One is bound to carry all the Timber in such a place before such a time, and lay it in such a place by the direction of a Stranger, he ought to procure the Stranger to give the direction.

Condition to give such a Release as the Judge of the *Prerogative Court* shall direct. Defendant pleads, Dr. L. was Judge of the said Court, and *quod idem Judex, nec devisavit, nec appunctuavit aliquam relaxationem, &c. secundum formam, &c.* its no Plea, for the Judge is a Stranger to the Condition, and the Condition is for the benefit of the Obligor, and the performance thereof shall save his Bond; he hath taken upon him to perform it at his peril, and he ought to have procured the Judge to have devised it, and directed it. Otherwise, if it had been as the Obligee or his Counsel should devise. 5 *Rep.* 23, b. *Lamb's Case.*

Condition to levy a Fine to the Obligee, he is not bound to levy it, if the Obligee doth not sue a Writ of Covenant against him, 5 *Rep.* *Palmer's Case* 127, 1 *Rob. Abr.* 458, y. 5 *Rep.* 22, b. *Halling's Case.*

Condition

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Condition is, *A.* shall deliver to *B.* a certain quantity of Hops well pick'd, and that *B.* shall have election of them out of 204 Bags of Hops of *A.* of his own growth; *B.* ought to do the first Act, *i. e.* he ought to require *A.* to shew him the 204 Bags; for he cannot make election without view of the 204 Bags which are in *A.*'s custody, 1 *Roll. Abr.* 466. *Brook and Booth versus Woodward, March 24. id. Case.*

Condition, that the Obligor being a Parson, shall resign to the Obligee within a certain time for a Pension, as they shall agree. The Obligee must agree and tender a Deed of this to the Obligor, before he is bound to resign. *Q. 14 H. 4. 18, b. cited in 5 Rep. 21. b.*

What things will excuse the performance of a Condition, and what not.

Act of God, *Vide supra.*

Act of Law, *supr.*

Act of the Obligee, *supr.*

Acts of a Stranger.

Regularly, If the Condition be to be performed by a Stranger, and he refuse, the Obligation is forfeit; for the Obligor hath taken upon him that the Stranger shall do it, or accept it.

Condition is, that the Son shall marry the Daughter of the Obligee; if the Daughter refuse,

refuse, yet the Condition is broken, 1 *Rol. Abr.* 452. 5 *Rep.* 23, *b.* *Lamb's Case.*

A. and B. submit to the Arbitration of C. by Bond. C. awards A. to pay 10 s. to B. who tenders this, and B. refuseth: The Obligor is not excused, for B. is not a meer Stranger, but is privy, 22 *Ed.* 4. 25, *b.* cited 1 *Rol. Abr.* 452. Q. I take the Law to be otherwise.

Condition to assure a Copyhold to A. and B. his Wife (who are Strangers to the Obligation) for the Life of C. and the Obligor at the request of A. surrenders this to A. to the use of such persons as he shall nominate; this is not any Performance: For A. who is a Stranger, may not dispense with or alter the Agreement; but to do as limited in the Condition, 1 *Rol. Abr.* 457, *T. Stile and Smith.*

Defendant is bound, that his Son that is a Stranger to the Bond shall seal a Release: He must seal it at his peril, and shall not have time to consult it, or demand it to be read, if he be not Lettered himself, 2 *Rep.* *Manfer's Case.*

Suits upon Obligations.

How they are to be brought :

In respect of *Who bring the Action,*
the persons *against whom it is brought.*

Action brought by a Body Politick.

They must be named by the true Name of their Corporation ; yet if the Essential part of a Corporation be named, it is sufficient in an Action: As, *ad respondend' Majori & Burgensibus de Lyn Regis in Com' N.* and it was found they were Incorporated *Majores & Burgenses burgi de Lyn, & non per aliud nomen. Per Cur.* The omission of this word [*Burgi*] shall not bar the Plaintiffs, 1 Brownl. Rep. 57. *Mayor and Burgesses of Lyn, versus Paine.*

On a Bond, made to a Bishop, Parson, Vicar, Master of an Hospital, or other sole Body Politick, the Executor or Administrator shall have this Action. Except in the case of the Chamberlain of *London*, where it goes to the Successor ; and so in the case of a Corporation aggregate, Dean and Chapter, Mayor and Comminalty, the Successor shall have the Action. 4 Rep. 65. *Fulwood's Case.* Cro. Eliz. 480. *Bird and Wilsford.*

Per two or three to whom the Obligation is made.

IF Obligation be made to three, and two bring their Action, they ought to shew the third is Dead. *Siderfin p. 238. Osborn and Crossborn.*

But in *Whelpdales Case*, This advantage was waived on *non est factum* pleaded. Also the Obligation being *Obligamus nos*, it shall not be intended the others did not Seal; but if they had not, the Count should have been on writing by three, whereof two did not Seal, *1 Keb. 840. Mesme Case.*

If two or three are bound joyntly, and one dies, the Executor of him that is dead is altogether discharged. And the Action may not be brought against the Survior and the Executor. *Siderfin p. 238. Osborns Case.*

Debt *versus* Excutor. Plaintiff *proferet* joynt Obligation without saying *jam defunct.* Q. if this be saved upon a General Demurrer. If the Executor had been Plaintiff in Debt upon such Obligation, he ought to have said *jam defunct.* to entitle himself to this his Action. *Siderfin p. 272. Osborns Case.*

Obligation made to three to pay Mony to one of them, they ought all to joyn in the Suit, for they are all as one Obligee; and if he which ought to have the Mony dye, the Survivors ought to Sue, tho' they have no interest in the sum contained in the Condition. *Yelv. p. 177; Rolls and Tate.*

By Baron and Feme.

THe Husband (after she Marries must joyn with her in the Suit) where the Bond was made to the *feme dūm sola fuit*; for if cause of Action arise before Coverture, tho' but Trespas, where damages are only recoverable, they must joyn, 1 *Keb. p. 440. Hardy and Robinson.*

Upon such Bond made to the Wife *dūm sola fuit* by the Husband only. Judgment staid. 37 *As. 11.*

If Bond be made to a Feme-covert, and the Husband disagree, in Action brought, the Obligor may plead *non est factum*, for by his disagreement the Obligation is no Deed. 10 *Rep. 119. Whelpdales Case.*

On Bond made to Baron and Feme, Feme Administers and brings Debt upon the Bond as Administratrix, she dies before Judgment, her Executors cannot bring Debt upon that Obligation, for she hath waved it, and that personal duty being a thing in action, may well lie in Joynture between Baron and Feme; aliter of other persons. *Noy, p. 149. Norton and Glover.*

By Alien.

ON Bond made to an Alien Enemy, he may have an Action for personal things, *Mare n. 852. VValsford and Marsham.*

F.

F. makes a Bill of Debt to A. by which F. acknowledges to have received of one P. 40 l. to be equally divided between A. and B. and to their use: *Per Cur.* B. need not joyn in the Action (tho' Tenants in Common ought to joyn in personal Actions) for they are several Debts, as 20 l. to one and 20 l. to the other. *Relv. p. 23. VVhorewood and Shaw.*

By Executor or Administrator.

AS to Suits brought by or against Executors, that more properly belongs to another Title in our Law, and the Pleadings stand altogether upon other Reasons. Yet I shall say something here, so far as refers to Obligations, as to Payment, Satisfaction, Release, Gift of the Action, and the like.

Two Men made an Obligation jointly for Debt, the principal made his Surety his Executor; who pays the Money generally, Q. if he paid it as Executor, or as Obligor. 3 *Leon. p. 197. Carter and Marten.*

B. As Executor brought Debt upon Obligation made to his Testator; the Defendant Pleads, he paid a lesser sum to the Testator, and that he did accept thereof in full satisfaction; *per Rolls* you may Traverse either the payment or the acceptance of the Money, but more proper to joyn Issue on the payment. *Stiles p. 239. Bp's and Cranfeild.*

Executor pays Debt on Bond in the debt & detiner, and had Judgment by Default, but it was Revers'd, because it ought to have been

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been brought in the *detinet* only. *Stiles* p. 278.
Lydall and Lister.

Administrator Sues *J.S.* upon Obligation, and had Judgment, and after the Administration is revoked; yet the Plaintiff took the Defendant in Execution: And upon motion the Execution was adjudged void, and the second Administrator shall not have Execution, for he is no party to the Record. *Telv. p. 83. Barnburst* versus *Sir Charles Telvorton.*

Six Executors brought Debt named in the Writ; after three were summoned and severed, the other three bring Debt upon a Bond; the Defendant Pleads *non est factum*, and found against him: *Per Cur.* there needs no mention of the other three who were severed, *Cro. Car. 420. Price and Parkburst.*

Debt *port* by Executors upon an Obligation; the Defendant pleads payment of the Principal and Interest to one of the Executors, of 18 years, and a Release by him; no good Plea; for he not being at Age could not Release, except he had the entire Forfeiture; the Chancery in such case will relieve. *Cro. Car. M. 13. p. 490. Kniveton and Latham.*

Debt by Baron and Feme, Executrix upon a Bond made to the Testator: Upon *non est factum* pleaded, its found to be made to the Testator and another: Judgment *pro Querente*. The matter of variance goes but in Abatement, and cannot be pleaded in Bar, *5 Rep. 119.* If the Defendant in this Case had demanded Oyer, and caused it to be entred

in *hac verba*; he might have Demurred to the Declaration, and the Court *ex officio* ought to have abated the Bill. *Allen p. 41, 42 Holdwych and Chase.*

In Debt by Executor, after imparlance the Defendant shall not have Oyer of the Testament, or of the Obligation or other Deeds. *Q. de hoc. doct. placitandi. 272.*

Two Executors made Partition of the Testators Specialties, and then one of them did release to the Debtor an Obligation, which did appertain to the part of the other, the Debtor having notice of the Partition between them, the other Sued in Chancery for relief: Chancery would not relieve him; but if the release were obtained by *Corvin* for a lesser sum than the Debt was, the Debtor should satisfie the overplus, *More n. 802.*

A. Administrator of B. de bonis non per C. against *H.* and Avers that *H.* had not paid it to *B.* nor to *A.* (not saying he had not paid it to *C.*) its good enough; for the Declaration is, *quas ei injuste detinet*, which *per Cur.* cannot be if it were paid to *C.* Also this lieth on the part of *H.* to plead in discharge of himself, 1 *Keb. 232.*

In Debt on Bond *per B. Administrator de bonis non* of *G.* The Plaintiff saith, the Executors of *G.* naming them, were dead (not saying intestate) and if any Executor made his Executor, the Plaintiff is not sufficiently intituled: *Non allocatur; per Cur.* the Defendant ought to shew there were Executors. Judgment *pro Quer.* 1 *Keb. 480. Burges versus Clayton.*
Against

Against Executor or Administrator.

DEbt on Bond against B. Executor; Defendant acknowledgeth the Bond, but saith, he gave another Bond in satisfaction of that Bond unto the Testator, which the Testator did accept in satisfaction: Ill Plea; one chose in Action cannot be in satisfaction of another. *Stiles p. 339. Crook and Vernon.*

Debt against J. B. and M. his Wife Executrix of her first Husband, upon Bond: Defendant Pleads thus, *præd. J. and M. per Attornat* say, that they were divorced before the Writ purchased: On Demurrer adjudged that the Writ shall abate. *Crook Eliz. 352. Underhill's Case.*

The Plaintiff brings two Obligations of 10 l. apiece against the Executor, whereas one was not due, and Damages were given for both entirely; but its no Error; for it was only an allegation of the Defendant, and it did not appear; and the Defendant rested not upon it, but pleaded another Plea. (*viz.*) a request to make a Release, and Issue upon that. If the Plaintiff Sue one as Executor jointly with the true Executor, who is not Executor, this is not in Abatement of the Bill or Writ, but only that he shall be barred against him, and so not Error, *Crook Eliz. p. 116. Thirkettle against Rewe.*

The constant difference is, where Executors bring the Action, all must be named; but an Action brought against them, may be against such only who do Administer; and unless it be averred that he did Administer, the Defendant cannot plead this Plea in Abatement; and therefore in 1 Keb. 865. *Swallow* against *Emerson*. In Debt upon a Bond, the Defendant pleaded that there was another Executor not named, and yet living, and doth not say that he did Administer: The Plaintiff Demurred, and Judgment for the Plaintiff.

Debt against the Defendant Executor of one joynt Obligor; Defendant pleaded in Abatement, that it appears the Obligation was joynt, *sed non allocatur*; for it appears not that the other Sealed, nor that the other Survived, in which case the Executor would be discharged; the Plea was concluded *quod billa cassetur*, and it begins with Judgment *de billa*, but the body of the Plea is a general Demurrer, which *per Cur.* is a plain bar to the Declaration, here being no Plea in Abatement, only the form begins and ends in Abatement, but there is no other form to a Demurrer to a Declaration: In Abatement it should be *si ad billam præ respondere debet*; for *præcludi non* is replication to a Plea, 3 Keb. 672. *Bager* and *Asb.*

Against Baron and Feme.

ON Obligation made by a Feme Covert, she shall plead she was Feme Covert, and conclude *Issint non est factum*, because it was void. 14 H. 4. 30.

Debt port against J. S. and Elianor his Wife, upon Bond made by the Wife; Defendants plead, *quod tempore confectiois*, and shew the day, she was Feme Covert: Plaintiff confesserth this, but saith she Sealed the same Deed, the same day of her Marriage, before her Espousals in the Morning. Defendant Demurs: Plaintiff had Judgment.

Rolls Rep. 431. Jacksons Case.

Feme Obligor of full Age, takes Baron within Age; In Debt on Obligation they pray his Age; but denied. *Noy p. 96.*

On Obligation made by the Wife *dum sola*; Issue is found against them; per Popham the *Capias* shall only be against the Wife, *Noy 13. Amson and Stockburne*, on *non est factum*, Judgment must be *quod capiantur*, *More n. 932. Bardolph and Perry.*

Plaintiff declares of Obligation made by the Wife *dum sola fuit*, the Writ must be in the *debet & detinet*, for the Baron hath the Goods of the Wife in his own right. 5 Rep. 136. 3 Leon. p. 206. *Walcotts Case.*

Against an Infant.

Vid. supra titulo, What Persons may, or may not make Obligations.

Against a Body politique.

IF one will charge Mayor and Comminalty, they must both be Bound. If one oblige himself by the name of Major and Comminalty, the Comminalty is not Bound, and no Goods of the Comminalty shall be put in Execution: So it is of Dean and Chapter; *aliter* of Abbot and Prior, for they are Bound tho' the Covent be not Bound, 3 H. 7. 11.

Prior Obligor is made Abbot, Action of Debt is maintainable against him, 9 H. 7. 16. b. Prior of Bath's Case.

Against two or three Obligors.

IF three are bound, and the Action is brought against two, the Plaintiff ought to shew that the third is dead.

If two or three are Bound Joyntly, and one dies, the Executor of him that is dead is altogether discharged, *Siderfin* p. 238. Of *born's* Case.

Debt on Obligation against one, and upon Oyer he and two others were Joyntly Bound; Demurrer, and Judgment *pro Querente*, that the Declaration is good; and it shall come on the other part to swear, that there

is

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is another named in the Lien, who is not named in the Writ, *Siderfin* p. 420. *Chappel* and *Uaughan*. Though two others are named, yet it appears not that they put their Seals to it, and so the Obligation is single; but if the truth were, that the other two had Sealed as well as the Defendant, then the Defendant if he would take advantage of this, ought not to have Demurred upon the Oyer, but he ought to have pleaded in Abatement, that the two other Persons Sealed the Obligation who are yet in full Life, and so pray Judgment of the Bill. *1 Sanders Trin. 21 Car. 2. f. 291.* the same Case *3 Crook 494. 5 Rep. 119.*

Three are bound *joynly* and *severally*; upon Action brought against two, the Defendants ought to shew that it was made by them and others in full life, not named in the Writ; because the Court shall not intend the Bond was sealed and delivered by all that are named in it; therefore the Defendants cannot demur upon it, though it be entered *in hæc verba*. So it is if an Action be brought upon a Recognizance taken before the Mayor and Recorder, &c. by *Stat. 23 H. 8.* because there the parties must seal. But in *Scire facias* against three Bailles upon a Recognizance acknowledged by them and the Principal *joynly* and *severally*: Upon Demurrer the Writ abated, because this being founded upon a Record, the Plaintiff ought to shew forth the cause of the Vari-

ance from the Record, as that one was dead, *Allen* p. 21. *Blackwell* and *Ashton*.

Four are bound by these words [*Utrumque nostrum*] the Obligee may charge any of these severally; but if he will have a Joynt Action against two of the four, the Writ shall abate. Three are bound joyntly and severally, Obligee cannot bring Debt against two, 10 *H. 7.* 16. 27 *H. 8.* 6.

Debt on joynt Bond against the Survivor. The Defendant pleads, one of the Obligors died, and the Plaintiff afterwards released to the Executor; the Release is void. *Alster*, had the Obligation been joynt and several, 1 *Keble* 936. *Scot* and *Littleton*.

When two are joyntly bound in an Obligation, tho' none of them is bound by himself, yet none of them shall plead *Non est factum*, for they had sealed and delivered it; but he may plead in Abatement of the Writ, and every of them is bound in the Entirety; therefore if they two are sued, and one appears, and the other makes default, and by process of Law he is Outlawed, he which appeared shall be charged with the whole. 5 *Rep.* 119. *Whelpdale's Case*.

The Defendant pleads he was bound *simul cum* R. G. to whom the Plaintiff had released all Actions the said first day of *May* (that being the date in the Declaration) The Plaintiff by Replication shewed, that after the Obligation sealed by R. G. he released to him; and after (*viz.* the same day) the Plaintiff sealed the Bond, *absque hoc quod simul tene-*

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tenetur cum R.G. The Plaintiff demurs; this Release doth not discharge the Defendant: And *per Cur^o* the Traverse is ill, because R.G. was bound with the Defendant. But because the Defendant had not taken advantage of it, to shew it on Demurrer, but confess'd it: Judgment *pro Querente*, Cro.Elix.p. 161. Mannings and Townsend.

Against a Servant or Receiver.

Godb. sealed a Bill to E. T. thus: *Mem.* that I have received of E. T. to the use of my Master, &c. the Sum of 40 l. to be paid at Michaelmas following. E. T. brought an Action upon this Bill. The Defendant demurs to the Declaration, supposing that he receiving it as a Servant to anothers use, he shall not be charged as a principal Debtor: *Per Cur^o*, The last Clause of the Bill is for payment of the Mony generally, (and doth not say, to be repaid by his Master,) and so shall bind him that sealed it, 1 Brownl.Rep. 103. Talbot and Godbolt.

Of Actions and Suits.

Action brought before Cause of Action.

THE Writ was dated Mich. 30 Eliz. The Condition was, if F. died before the Age of 21 years; then if the Defendant caused an 100 l. to be paid to H. within three Months after the death of F. then, &c. F.

F. died 30 Septemb. 30 Eliz. The Plaintiff hath no cause of Action, as appeareth by the Record, 1 Leon. 186. *Woodshaw and Fulmerston*.

Condition to pay an Annuity at Lady-day, or within twenty days after. Issue being joyned on a Collateral matter, and found *pro Quer?* It was moved in Arrest of Judgment, that the Original was brought the 8th of April; and he alledged the Breach to be Lady-day last past, which was within the twenty days, and so the Action brought before he had cause of Action: Apparent fault, *Cro. Eliz. 565. Blunden's Case*.

After Verdict and Judgment, it was assigned for Error, that the *Teste* of the Original was before the day of payment in the Condition, Judgment was reversed, *Mora N. 776. Williams and Buckley, Cro. Eliz. 325, mesme Case*.

If there had been no Original, it had been good after Verdict; but this is not aided by *Stat. 18 Eliz.*

Bill Filed before the Obligation dared, the Record was amended, *Siderfin p. 252. Manning and Warren*.

Joinder in Action, *Vid. supra sparsim*.

Bond where suable.

Bond made in *Virginia*, in *partibus transmarinis*; it may be sued in the Admiralty, 2 Rol. Rep. 497. *Tucker and Caps*.

Vid. supra. Et supra tit. Pleading to the Jurisdiction.

Decla-

Declarations.

PEr Stat. 6 R. 2. its provided, the Original shall not be laid in one County, and the Declaration upon a Bond made in another County; if so, the Writ shall abate. Therefore if one plead the Bond was made in another County, than where it was alledged in the Declaration, its an ill plea, *Allen, Hill. 22 Car. p. 17. Shalmer and Slingsby.*

In Debt on Bond, the place of the making of the Obligation ought to be shewed in the Count; but if the Defendant plead Duress or Acquittance (by which he confesseth the Deed) this makes the Count good, 28 H. 8. *Dyer 14.*

In Debt on Bond, Annuity or *Præcipe* of a Rent-charge, the place where the Deed bears date, ought to be alledged. *Alister* of a Release of Lands or Rent, for this is Executory upon the possession, 5 H. 7. 24. 28 H. 8. *Dyer 14. 14 H. 8. 16. a.*

To be paid at his Mansion-house, &c. this may be paid at any place, 3 *Bulstr.* 244. *Meletine and Hall.*

Surrey was in the Margent, and the Defendant in the Declaration was named of *D.* in the County of *Suffex*, and that he made that Obligation at *D. in Com. præd.* and on *Non est factum* it was tryed in *Surrey*, and Error assigned; because *Com. præd.* refers to the County last named: *Non allocatur*; for it shall have relation to the County where the Action

Action is brought, and that named in the Margent: For the other County mentioned was by way of Recital, and so it shall not relate thereto, *Cro. Eliz.* 481. *Shirly and Sackville.*

Time.

A Declaration upon an Obligation, made *ultimo die Augusti*; upon Oyer of the Bond it bore Date the 19th of *August*. The Defendant pleaded *Non est factum*, the Jury found it his Deed, and the Plaintiff had Judgment: For the Count was not of the date, but of the making, and the Jury have found the Deed, *Hobart* p. 249. *Thorpe and Taylor.*

A Bill Filed before the Obligation dated, the Record was amended in *B. R. Siderfin* p. 252. *Manning and Warren.*

An Obligation made to accord with the Indenture of Covenants in point of Time, with Averment there was no other Indenture, 3 *Keb.* 117. *Counsefs of Falmouth.*

Form of the Declaration.

IN the King's Bench it is said, *Sigillo suo sigillat*; but in the Common Pleas it is, *Per scriptum suum Obligatorium concessit se tene-ri, &c.* without saying, *Sigillo suo sigillat*; delivery is never alledged; and when it's said, *Per scriptum suum Obligatorium*, all necessary Circumstances are intended to concur, viz. Sealing and Delivery, otherwise it is not a Writing

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Writing Obligatory, *Cro. Eliz.* fo. 737. *Penson* and *Hodges.* 2 *Keb.* 630. *Cubitt* and *Green.*

Three bring Debt, and declare that the Money was not paid to them, and say not, *Nec alicui eorum*; yet it's good; For payment to one, is payment to all the Obligees, *Noy* p. 69. *Warner's Case.*

Debt of 300 l. upon two Obligations, dated 20 December, to pay 150 l. &c. and averred he had not paid it, and did not say [Nor any part of it;] yet good, *Winch* p. 72. *Foster's Case.*

The Plaintiff declared, that the Defendant such a day, *concessit se teneri, &c.* & profess *hic in Curia scriptum prædictum quod debitum præd', &c.* The Defendant demands Oyer of the Condition, and pleads payment; after a Verdict, Judgment *pro Querente.* It was assigned for Error, because he doth not declare according to the usual Course, *Quod per scriptum suum Obligatorium concessit*, nor any Writing mentioned in the former part of the Declaration, *Sed non allocatur.* The Writings are produced, and the Defendant by his Plea shews, it's an Obligation with Condition; and it appears to the Court, that the Plaintiff hath a just Debt, and good cause to recover. *Cro. Car.* 209. *Sir William Courtney's Case.*

In Debt *sur Bond*, the Defendant confess'd the Action; and because it's not said in the Declaration, *Hic in Curia prolat'*, it was adjudg'd a fault in Matter, and Error, *Cro. Jac.* 32. *Dawbenny* and *Bannister.* *Vid. le noveh Statute.* 1f

If a Bond be made to one, and he doth not say in the Bond, it shall be paid to the Obligee, in this case the Plaintiff must shew that it is to be paid to him, tho' not expressed in the Bond, 1 *Brownl.* 72. *Anonymus.*

If any of the Bond be received, it must be acknowledged in the Declaration.

Debt on two Obligations, one was 100 l. the other 10 l. and he brought an Action generally of 200 l. upon these Obligations, and acknowledgeth satisfaction of 10 l. but sheweth not of what Obligation it was that he acknowledgeth the payment of 10 l. its no Error, 1 *Rolls Rep.* p. 423. *Hale and Malyn.* *vid.* 3 *Bulstr.* p. 244.

Plaintiff declares upon a Statute Obligation, *Solvendum* upon Request, and on *Oyer* it appears to be payable at a day certain: Incurable fault, *Crook Jac.* 316. *Fox and Inkes.*

Debt upon a Bill of 14 l. *Solvendum unicum* 6 l. upon Account between them, the Plaintiff only declares for 14 l. and good, for that which comes after the *Solvendum* is void, *Crook Eliz.* 537. *Woodward and Parry.*

Declaration is upon thres several Obligations, and upon *Oyer* of the several Conditions, it appears one of the sums in the Condition, was payable after the Bill exhibited. Issue was joyned on Conditions performed, and Verdict for the Plaintiff, and intire Damages; and upon Release of Costs
and

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and Damages, Judgment was given for the two firsts Bonds only : For tho' the Bill be an entire sum, yet by the Court it appeareth, they be as several Demands and Suits, *Hobart p. 178. Andrews and Delabay. 1 Brown. 68. Mesme Case.*

One Declaration is naught: After appearance the Plaintiff pleads *de novo*, *Noy p. 63. Rossiter and Busshey.*

In *B. R.* the first Declaration was in Debt on Obligation, *5 Feb.* and the second was on an Obligation dated *15 Feb.* and the pleading and Judgment was thereupon, and held good, for it was held as a Declaration without an Original, which being after Verdict was ayded, *Crook Jac. p. 89. cited in Sir Michael Dormers Case.*

Debt on Bond dated *13 Feb.* The Defendant imparles, and after a second Declaration was made, and therein he declares on an Obligation dated, *15 Feb.* Defendant pleads *non est factum*; it was amended and made according to the first Declaration; for the first is the principal, and the Plea always refers thereto, *Crook Jac. p. 105. Burrel versus Sir William Bowes.*

Debt by Baron and Feme on an Obligation made to the Feme *dum sola fuit*, and the Declaration is *ad damnum ipsorum*, its good, *Stiles 134. Anonymus.*

In Debt due upon a Bond or Contract, there needs not a special Demand to be laid, but *licet sapius requisitus* is sufficient. *Aliter* if it were due by Arbitrement *cum requisitus fuisset.*

fuisse, for then there must be a special demand, *Cro. Jac.* 640. *Waters and Bridges*. 1 *Brownl.* 30.

In inferior Court of Record 50*l.* in figures is Error, *Stiles* p. 165. *Jbson and Beale*.

A thing that doth not intitle the Plaintiff to Action, need not be contained in the Count. If the Condition be Endorsed or Subscribed, it need not be contained in the Count; but if it be contained before the (in Witness) then it ought to be contained in the Count. If a Man be bound to pay 10*l.* when the Obligee carries 200 Load of Hay to his House; there the Condition is precedent, and it ought to be contained in the Count: What comes after the in Witness, be it a Proviso or Memorandum, it may be as a Condition or Defesance, and need not be contained in the Count, 2 *Brownl. Rep.* 97. *Hammond and Jetbro.* Be it known that J. C. bind me to R. in 40*l.* to discharge and save harmless the said R. against W. Solvend' *tali die, &c.* there the Count is good, generally, without saying the Defendant had not saved harmless, 22 *Ed.* 442. One ought to declare specially according to the Bill; the Bill was, to pay as I pay my other Creditors: The Plaintiff declared generally, that he was indebted to him in 5*l.* Solvend' upon request: Its ill, *Cro. Eliz.* 256. *Bright and Metcalf.*

Declaration

Declaration for Outlandish Mony.

Decares upon a Bill Obligatory, wherein the Defendant was obliged to pay him 600 Guilders of legal Mony Polonish (*viz.*) *ad valorem 220 l. legalis monetae Angliae*, and that the Defendant had not paid unto him the said 220 l. *monetae Angliae*, nor the said 600 Guilders *monetae Poloniae*, *per quod Actio accrevit, &c.* Defendant pleaded *non est factum*, and found *pro Querente*, and the value of the Mony was enquired by the Jury (*viz.*) that the value of the 600 Guilders Polish, was at the time of the Bill and now, 220 l. The Action is well brought in the *defence*, because he is to recover the value, and the demand is not of any sum certain; *Cro. Jac. 617. Rands and Peck. Cro. Eliz. 336. Bayshaw and Plaine. Latch p. 477. 84 Wards Case.*

The Court cannot compel the Plaintiff to set forth the Condition in his Declaration; but till he doth it on Oyer demanded, the Defendant shall not be compelled to plead; *Stiles 125. Sir Charles Coote and Plunket.* On Oyer demanded unless the Plaintiff will shew the Bond, the Court will set aside the Judgment as irregular; *2 Keb. 275. Beadly and Beach.*

When the Plaintiff counts on Bond, it ought to remain in Court, unless the Defendant after Oyer demanded suffer it to be delivered out, then on *non est factum*, the Court will not order it to remain there on prayer of the Defendant, although anciently it hath been so; *1 Keb. 286. Williams and Huller.*

In Debt on Bond to deliver up Goods in a Schedule annexed; *per Cur.* on demand of Oyer of the Condition, they shall have also Oyer of the Schedule, being all as one Deed; but Oyer of Indenture for performance of Covenants, shall not have Oyer of the Covenants, but yet must set them forth, and if he have no counterpart he may move the Court and obtain it, 2 *Keb.* 4. *Waterman and Adams.*

Variance between the Obligation and Declaration.

DEbt on Bond, the Plaintiff declares of a 1000 *l.* to be paid to him, and the Defendant demands Oyer, and he was bound to *J.R.* to be paid to *J.K.* to the use of *J.R.* The Defendant Demurs; the *Solvend'* to the Stranger is void, and the Court seem'd *pro Querente.* On *non est factum* pleaded, it had been well enough so, if this had been a Condition to pay. *Qu.* if there be no sufficient words of Obligation to the Plaintiff, *Siderfin* p. 290. 2 *Keb.* 81. *Queen Mother versus Challoner.*

Variance between the Obligation and Count shall not be shewed after imparlance, 1 *Brownl.* 95. *Percher and Vaughan.*

Variance in the Sum.

THe Declaration was, the Defendant stood bound to him in *Septingent' & quinquagent' libris*, and produced his Writing Obligatory, and upon Oyer the words were

Septuar

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Septuagint' and quinquagint' libris: The Defendant pleads the Variance, and demurs thereupon: *Per Cur.* that is no cause to abate the Writ. The Defendant then pleaded *non est factum*; and the Jury found that the aforesaid Writing Obligatory, *de summa Septuagint' & quinquagint' librarum per quod prædict W.W. per breve suum exegit de præfat' T.P. infrascript septingent' & quinquagint' libras* was sealed, &c. *sed utrum super tota materia, &c.* the Court awarded the Plaintiff should recover the 750*l.* and Costs, *Hobart 116. Walter and Piggots Case.*

The Obligation was *octogint'* and the Declaration *octogint'*, and Variance pleaded: See the form of Pleading and entring Judgment; *Hobart p. 19. Fitzhughes Case.*

Upon Oyer it appears no sum is mentioned in the Condition, and the Declaration is to pay so much: *Per Coke*, its a material Variance, and the Obligation is single, and no day being set down its payable on request, and so the Declaration is good, *2 Bulstr. 156. Dorrington and VValler.*

Debt in York on Obligation of 13*l.* Plaint was in *pliciso debiti 14l.* which variance was assigned for Error, *2 Keb. 590. Vaviser against Bellingham.*

¶

Variance

Variance in the Names and Additions; Misnomer.

Molineux enters his Original in the Common-Bench against *Markham*, in Debt on a Bond per name of *J. Markham* Alderman, *de D.* and declares against him by the name of *Markham de D. Esq;* and Judgment was given *pro Quer. sur Verdict*, it was adjudged Error, *Yelv. p. 120. Molineux and Markham.*

The Plaintiff in the Obligation was named *J. Thorney de Fenton in Com' Not Armig'* and in the Declaration he was named *J. Thorney Armig'*; so (*de Fenton in Com' No'*) were left out: The Defendant demands Judgment of the Bill for this Variance *Per Cur. respondeas ouster*; for this is no Variance to abate the Bill, when he is well named in his proper Name and Surname, the addition is not material; otherwise, if it were of the part of the Defendant, *Cro. Eliz. p. 311. Thorney and Disney.*

Declaration is on a Bond by *Edmund Shephard*, (for so it was signed) and shews a Bond of *Edward Shephard, Noverint, &c. me Edwardum Shephard, &c.* Upon *non est factum*, the Jury found it the Deed of *Edmund Shephard*, and Judgment was Arrested, for they are distinct names. And though it be subscribed by the name of *Edmund*, yet that is no part of the Bond, he ought to have brought his Action according to the Bond, *Cro. Jac. 640. Maby and Shepard, Cro. Jac. 558. Watkins and Oliver.*

Count

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Count quod prædict' Jacobus per nomen Johannis W. per quoddam scriptum, &c. upon Dyer, the Defendant by the name of John W. fecit scriptum. The Condition was, if James W. paid. The Defendant Demurs: Per Cur. the Action lay not, for John cannot be James, Crook Eliz. 897. Feild and Winlowe.

W.S. is bound by the name of J.S. Action brought against him by the name of J.W. alias J. On non est factum, adjudged the Plaintiff shall not recover; the Action should be against J. as he is named in the Obligation, 11 Eliz. Dyer 279. The Defendant pleaded variance between the Obligation and the Declaration; for the Obligation was Randal, and the Declaration was ad respondend' Randolpho alias Randal. Q. if Randolphus be Latin for Randal, 3 Leon. p. 232. Babington's Case.

In the Writ he was named Son and Heir apparent, and in the Declaration Son and Heir generally; for this variance the Judgment was reversed, Crook Eliz. 333. Annesby and Stokes.

When a Man appears and pleads, he hath lost the advantage of Misnomer, 2 Rolls Rep. 50. Sir Francis Fortescue's Case.

If he is named Saxex in the Original, and Saxey in the alias dict', its variance; for he ought to declare against him, by the name he was at the time of Sealing the Bond, and as he is named in the Condition, and the alias dict' is for no other purpose, but to make the name agree with the name in the Bond. If Action be brought against J. S.

who at that time was Esquire, and afterwards he is made a Knight; there he shall declare against J.S. *Armig. alias dict. J.S. Mil.* But in the first case it was no Error, it being an easie Mistake, 1 Bulstr. 216. Saxey and Whemson.

Variance in time of payment of Entry.

THE Bill was, *Be it known, &c.* to be paid at two payments, that is to say, 5 l. to be paid the 19th day of November, which is the present of this Month, and the other 5 l. the 10th day of December; and the Bill was dated 17th Nov. 1604. The Plaintiff declares, the Defendant did acknowledge himself to owe the Plaintiff 10 l. to be paid to the Plaintiff at two payments, viz. 5 l. to be paid the 19th of November then next following, and the other 5 l. to be paid the 10th day of December then next following. On *non est factum* the Jury found the Special Matter. The Question was, Whether the Bill maintain the Count for the first payment, and adjudg'd it did, *Brownl. 1 Rep. 74. Prest and Cee.*

The Count is of a Bond dated 1 May, and the Entry is of 2 May; on a Release pleaded, and Issue thereon, it's good enough. *Aluer on non est factum, 1 Keb. 426. Billage and Blake.*

Oyer, monstre des faits.

IF no Oyer be demanded, it's intended a single Bill, 1 *Keb.* 937. *Coxall and Sharp.*

In Debt on Obligation, the Defendant avers the Obligation was for security of certain Rent, &c. without demanding Oyer of the Condition; it's but as a single Bill, and he cannot aver a Condition; and so upon Demurrer adjudged *pro Querente*, 1 *Roll. Rep.* 425. *Baylee and Harrington.*

The Law in *Henry* the Seventh's time was, That the Defendant need not shew forth the Indenture of Covenants, on Oyer demanded, 6 *H.* 7. 12, 13. 9 *H.* 7. 17. 13 *H.* 7. 18.

The Defendant craves Oyer of the Obligation, & *ei legitur*; and then of the Condition, & *ei legitur*: And this was for performance of Covenants in an Indenture, and after Oyer of the Condition the Entry on the Roll was, That the Defendant prays Oyer of the Indenture mentioned in the Condition, which was not brought into Court, & *ei legitur*. The Plaintiff demurs, for that the Defendant hath prayed Oyer of an Indenture, which was not brought into the Court by the Plaintiff, nor appears to be in Court *omnino*: *Per Cur'*, This is aided *per Stat.* 27 *Eliz.* c. 5. upon general Demurrer; but *per Cur'* the Defendant ought to have shewed the Deed, and not the Plaintiff, by Law, although the Court sometimes will compel the Plaintiff to give a Copy of an

Indenture to the Defendant, if he swear that he never had a part, or had lost it: But this is *ex gratia Curiae*, not *ex debito Justicie*, for the Entry always supposeth this to be brought in Court by the Defendants; and so 7 H. 4. 1. that the Plaintiff in such case ought to shew the Indenture, is no Law at this day, 1 Sanders 8, 9. Jevans and Harridge, 2 Keb. 116. *mesme Case*. Demand Oyer, to save the advantage of Demurrer *per* Variance, 1 Keb. 426. Billage and Blake.

The Defendant prays Oyer of the Condition, which is for performance of Covenants, in an Indenture made between the Plaintiff on the one part, and H. H. on the other part, on the part of the said H. H. to be performed; and upon Oyer of the Condition the Defendant pleads, that the Indentures were made between the Plaintiff and the said H. H. such a day and place, and one part under the Seal of the Plaintiff the Defendant brought in Court; and further, that there were not any Covenants in the said Indenture, of the part of the said H. H. to be performed, *Et hoc paratus, &c.* The Plaintiff prays Oyer of the Indenture *per* the Defendant brought in Court, which is entred *in hac verba*; and upon this it appears that there are divers Covenants to be performed on the part of H. H. and upon Oyer of the said Indenture, being so entred, the Plaintiff demurs. It was urged for the Defendant, That the Plaintiff ought to have shewed a breach of one of the Covenants, to maintain his Action: But *per Cur.* when the

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the Defendant brought the Indenture into Court, and saith there are no Covenants in it, &c. Now upon Oyer of this, the Indenture is made parcel of the Plea; and by this it appears Judicially to the Court he had pleaded a *faux* Plea, and had taken an Averment against the truth of that that appeared to the Court by the Indenture it self; and so the Plaintiff need not shew any matter of Fact in his Replication to maintain his Action, but a Demurrer was more proper, 1 Sanders 316. Smith and Yeomans.

Condition to perform Covenants in an Indenture, *i. e.* to pay 300 *l.* and to Repair as three shall award. The Breach was, that Award was made, and the Defendant had not Repaired. The Defendant prays Oyer of the Indenture, which was well, and of the Award, and sets it forth untruly. The Oyer was set aside, because Irregular; and if the Award be not at first truly set forth, the Defendant might traverse it, but cannot pray Oyer of any thing not in *Curia prolat*, 3 Keb. H. 28 Car. 2. p. 716. Sands and Tomlinson.

Le Defendant demand Oyer del Oblig', & de Condition; la form, 2 Sanders 75.

Le Defendant demand Oyer des 2 Oblig', & Demur', 1 Sanders 282.

Defendant ad Oyer de Condition de Oblig', & apres ad Oyer des Instructions, 2 Sanders.

Le Defendant sur Oyer del' Condi' a performer Covenants amesne en Cours le Indenture, & plede Conditions performe, 1 Sanders 52.

Monstrans de Obligation, Rast Entr. 180. b.

Condi.

Condition.

Where a Recital in a Condition shall be an Estoppel.

BY a bare Recital in an Obligation, one shall be Estopped, 13 *Ed. 4. 4.*

A Recital by a single Bill shall estop the party, 25 *Ed. 4. 54.*

Recites by an Obligation, that he made a Will, he is estopped to say the contrary, 26 3 *El. Dyer 190.*

As to Estoppel by Recital, there is a difference where it goeth in the generality, and where in the particularity: For where it is in the generality, as to enfeof one of all the Lands descended to him, or to be Nonfuit in all Actions depending in the Common Pleas, he shall not be estopped to say that he hath not any Land, or that he hath not any Action depending there, 18 *Ed. 4. 4.*

Against a Condition to perform all Covenants, a man may say there were not any Covenants, 21 *H. 4. 54.*

Condition to pay Rent reserved upon a Demise, according to such Articles. The Defendant pleads, he hath not any thing in the Land demised by such Articles: *Per Cur.* upon demand he shall be estopped to plead that, *Cro. El. 3. p. 362. Strowd versus Willis. Popbam p. 114.*

Condition, whereas *E. W.* hath commenced divers Suits in *B. R.* against *W. H.* If the said *W. H.* shall without delay by his lawful
Attor-

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Attorney appear, and make answer to all Actions and Declarations commenced against him, that then, &c. The Defendant pleads, That *postea* (viz.) such a day *W. H.* appeared, and *paratus fuit respondere C.* but that there were not any Actions there depending. Upon Demurrer; *per Court*, ill Plea. He is estopped to plead, that there were not any Actions there depending. As if a man be obliged to perform the Covenants in the Indenture on his part to be performed; it's no Plea to say, there were not any Covenants on his part to be perform'd, 3 *Eliz. Dyer* 196, & 279. *Cro. El.* p. 756. *Willoughby versus Brook*, p. 42. *Eliz. C. B.*

Condition to perform Covenants in Indentures between *W. S.* and *A.* his Wife of the one part, and the Plaintiff on the other part. The Defendant pleads the Indenture, as the Indenture of *W. S.* and *A.* his Wife; whereas in truth the Feme never sealed. The Plaintiff replies, That the Indenture shewn by the Defendant *non fuit fact' inter W. S. & A.* his Wife, on the one part, and the Plaintiff on the other. *Per Cur.* the Plaintiff is not estopped to say, that the Deed shewn, is not the Deed of the Baron and Feme; but he is estopped by the Condition to say, that there is not any such Indenture, *Cro. El.* p. 769. *Ship versus Steed.*

Condition was, Whereas the Plaintiff had carried so many Thousand of Billets for the Defendant to *D.* amounting at so much a 1000 to 100 l. If the Defendant therefore should pay

pay the 100^l. The Defendant pleads upon Oyer, that the Plaintiff did not carry and deliver so many Thousand of Billers, &c. *Per Cur.* this Recital in the Obligation, is an Estoppel to the Defendant to plead the contrary, *Stiles* 103. *Allen* 52. *Hill* 23 Car. 1. *Hart versus Buckminster.*

The Defendant pleads in Abatement, that he is Earl of *Nova Albion* in *Ireland*, and ought to be impleaded by that Name, and not by the Name of *Edmund Plowden Kt.* *Per Cur.* He pleads he was Earl of *Nova Albion* in *Ireland*, before he entred into the Bond, which he cannot now plead, for he is estopped to plead so by his own Deed, which testifies the contrary, *Stiles* p. 187. *Weston versus Plowden.*

Condition, If the Defendant and his Wife should appear such a day at the Palace Court, &c. The Defendant upon Oyer pleads, That he himself did appear at the day, *prout patet per Record^a*, and that he was not Married at the time of the Obligation, nor ever after. *Per Cur.* it's no Plea, for he is estopped to deny that he had a Wife, *Allen* p. 13. *Paine and Shelltrop.*

Recital in a Bond, is an Estoppel to say the contrary; but if Issue be tried contrary, it's good: As, *Non damnif.* pleaded in Debt on Bond, with Condition to pay for Meat, Drink, &c. The Plaintiff replies, *Quod hospitavit*, on which the Defendant takes Issue, *quod non hospitavit*, and Ruled good after Verdict, 1 *Keb.* p. 344. *Holt and Harder.*

Debt

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Debt on Bond to perform Covenants, Specified in an Indenture betwixt *A.* and *B.* The Defendant pleads, there was no Covenants. *Per Cur.* this being generally of all, is well. *Contra*, If it were to perform any certain Covenants; but the party is estopt to say, there is no Indenture, but he must set forth the Indenture it self: But the Plaintiff shewing the Indenture, if any Covenants be therein, the Jury must find for the Plaintiff, 1 *Keb.* p. 381. *Brazier and Aston.*

Condition, That a Stranger shall release all his Right to the Plaintiff. The Defendant pleads, that the Stranger had no Right. The Plaintiff demurs: *Per Cur.* he is estopt, and the Plaintiff must release whether he have Right or no, 2 *Keb.* p. 471. *Doughty and Neale*

Debt on Sheriff's Bond, to appear in *B. R.* according to custom, at the Suit of *M.* in Debt. The Defendant pleads, there is no such custom in *B. R.* to appear to an *Ac etiam Billa.* He is estopt to plead this, 3 *Keb.* 160. *Forth and Ward versus Walker.*

Condition, to pay and satisfie out of the Profits of the Coal-Mines clear. The Defendant pleads, there were no clear Profits. The Defendant is not estopt by the Bond to plead this, being general, 3 *Keb.* p. 466. *Howard and Wych.*

Condition to pay a Legacy devised by the Last Will of *J. S.* The Defendant pleads, it's true *J. S.* did by his Last Will give the said Legacy; but saith, that *J. S.* did revoke that Last Will, and after died, and by the
later

later left nothing to the Plaintiff. Demurs, because being intended a Bond made after the death of J.S. the Defendant is estopped by the Condition of the Bond to say, there was no such Last Will, especially no time of either Will being mentioned. Which the Court Agreed. And if the Bond were before J.S. died, the Defendant hath undertaken, and must pay it at his peril, 3 *Keb.* 303. *Backwell* and *Barjew.* *Mod. Rep.* 113.

Condition to pay Money yearly, according to the form and effect of the Indenture, made between the Plaintiff and Defendant. The Defendant pleads, there was no such Indenture. He is estopped to plead so, 1 *Brownl.* 57. *Fitch* and *Bissye.*

The Defendant was obliged to make an Obligation to appear in B. R. at a day prefixed in the Writ: The Defendant pleads, there was no day prefixed in the Writ for his Appearance. He is estopped to plead thus, 1 *Brownl.* 91. *Andrews* and *Robins.*

If a man be bound to pay an hundred Pounds that J. S. owes to him; he cannot plead that J. S. doth not owe him 100l. *Per Williams* in *Andrew's Case*, 1 *Brownl.* 41.

Condition to perform things for which he was bound in a Recognizance: He is concluded to plead, that he is not bound in any Recognizance, 2 *Rep.* 33. *Doddington.* 1 *Roll.* *Rep.* 83. *Fletcher* and *Farrer.*

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Condition was, That if the Defendant do not commence and prosecute any Suit in any Court, Spiritual or Temporal, against the said *A.* his Wife; but shall from henceforth, during the Natural life of him and *A.* his Wife, use and maintain the said *A.* as his lawful Wife to all intents, that then, &c. The Defendant pleads, he had not brought any Action, &c. after the Obligation; and that before the said *A.* was married to him, she was married to *J. S.* who is yet alive; for which cause he cannot maintain and use the said *A.* as his lawful Wife. Upon which he Demurs. *Per Cur.* The material part of the Condition did consist in the first part, and the Defendant having pleaded an issuable Plea to that, it's not material if he plead to the Later part or not: And if his Justification be insufficient, the Plaintiff ought not to have demurred upon it. But the Court held the Justification good, and he is not Estopped to plead the special Matter of her former Marriage; because she is called Wife in the Condition, for he may confess and avoid it: For she may be his Wife to some purposes, but not to use her as his lawful Wife, *Mo. N. 652. Phratt and Planner.*

One is bound to *J. S.* to enfeoff him of the Manor of *D.* in Debt upon this Bond, he shall not say, he had not such a Manor of *D.* *Aliter* if one be bound to enfeoff me of all his Lands in such a County, 21 Ed. 4. 54.b.

Pleadings.

Pleadings.

IN treating on this, I shall lay down some general Rules and Diversities, and apply cases thereunto, and afterwards speak of special Pleas, as Acceptance, Release, Payment, &c. and particularly how and where *Non est factum* may be pleaded; and also of Foreign Pleas. Though in all the precedent Cases, I have had an Eye still to the Pleadings under the proper Titles, and shall make reference thereto as occasion shall be.

As to the Rules of Pleading: I shall consider,

Of Pleading or Performance generally, and where it must be pleaded specially and particularly.

In what cases it must be shewed, how and where performed and done.

Of the Certainty of Pleading, and where it must be pleaded according to the express words of the Condition or Covenant, and where further than the express words.

Of the *partes Placitorum*.

I shall observe some diversities, which will better be understood in the application of the following Cases. *Qui bene distinguit, bene docet.*

1. There

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1. There is diversity between Pleading in the Negative and in the Affirmative.
2. Between Pleading to Negative Covenants, and to Affirmative Covenants.
3. Between a Condition precedent and subsequent.
4. Between a Condition to do a Collateral act; as to make a Feoffment, render Account, &c. and where it is to pay Money.
5. Where the Money in the Condition is a collateral Sum, and where it is parcel of the Obligation.
6. Between a Condition Copulative and Disjunctive.
7. Between payment or performance by or to a Stranger, and payment or performance by the Obligor to the Obligee.
8. Where an Obligation is void, and where voidable.
9. Between a delivery to the party himself, and delivery as an Escrow.
10. Between acts to be done by a Condition, which are Transitory or Local.
11. Between a Condition void against Common Law or Statute Law.
12. Between where the Obligation is void, and where the Condition is only void, and the Obligation single.
13. Between a Bargain and a Loan.
14. Between a Bill Obligatory, and an Obligation with a Condition. *Vid. supra titulo Bill.*

D d

Where

Where Performance generally may be pleaded, and where it must be shewed specially, and how performed.

IF a man be bound to perform all the Covenants in an Indenture, if all be in the affirmative, he may plead General performance of all; but if any be in the negative, to so many he ought to plead Specially, (for a Negative cannot be performed) and to the rest Generally, *Doct. placitand.* 57, 58.

So if any of them are in the Disjunctive, he must shew which of them he hath performed; and if any are to be done of Record, he ought to shew this Specially, and may not involve it in General pleading, *Ibid.* But,

If the Defendant pleads Performance generally, and the Plaintiff demurs, and shews some Covenants are in the Negative, and some in the Affirmative: As to the Covenants in the Affirmative, he ought to plead a Special performance, and to shew how he hath performed them. *Judgment pro Quer. Stiles M.* 1649. p. 163. *Fines and Dell. Allen, Hill.* 23 Car. p. 72. *Ellis and Box, Lit. Rep.* p. 2.

Upon a Bond for Performance of Covenants generally, H. may plead General performance; but when to does any particular act, he must answer certainly, 1 *Keb.* p. 111. *Sir George Bellison's Case.*

✧ A diversity between the Condition of an Obligation which consists of several parts, and Covenants in an Indenture which consist of several parts in the Affirmative: For in the case of Covenants, Performance generally, is a good Plea; but in the case of the Condition of an Obligation, the Defendant ought to shew in pleading, that he had performed the several things comprized in the Condition particularly: As the Condition was, that the Defendant shall deliver such Briefs to all Churches, &c. before such time, &c. and to deliver the Mony collected. The Defendant pleads Performance generally: Ill Bar; for he ought to have pleaded particularly what Sums he had received, to the intent he may give an account: And so, if in his Bar he had said, He delivered the Briefs, and saith not at what time, *Siderfin* p. 215. *Woodcock* and *Cole*.

On Affirmative Covenants general pleading and Performance is sufficient; and so on Negative; per *Twisden*, 1 *Keb* 413. *Nicholas* and *Pullen*. *Qu. Vide Palmer's Rep.* 70. *Ley* and *Luttrell*, *contra*.

See more of this Learning of Covenants, being in the Negative and the Affirmative, in 10 *H. 7. 12. b.* 16 *H. 7. 11. a.* 4 *H. 7. 12. & supra*.

Covenant, that he shall go in such a Ship to, &c. and the words are, *Quod decederes, procederet, & non deviet*. The Defendant pleads Performance generally, it's not a good Plea. As to a Negative Covenant,

which is only in affirmance of the Affirmative Covenant precedent, Performance is a good Plea. But as to a Negative Covenant, which is additional to an Affirmative Covenant, as here, he ought to plead Specially, *Siderfin* p. 87. *Laughter* and *Palmer*.

If a Man Plead in the Affirmative, he hath saved the Plaintiff harmless, he ought to shew how; *aliter* if he Plead in the Negative *non damnificatus*, 5 Rep. 24. *Broughtons Case*. 2 Rep. *Mansers Case*. 4 H. 7. 12 Cro. *Eliz.* 916.

If a Man Plead a Discharge, he must shew how, 2 Rep. *Mansers Case*; as if a Man be bound to Discharge an Obligation of 100 l. the pleading of a general Discharge, without shewing how (*viz.*) by release or otherwise, is not good, 35 H. 6. 10, 11. The Defendant Pleads, he tendered a Discharge to, &c. and he refused, &c. he ought to shew what Discharge it was, 22 Ed. 4. 40. *per tous les Justices*.

Conditions is, that the Defendant shall ratifie and confirm such a *Demise*, its not sufficient to say, he had ratified and confirmed it, but he ought to shew how, and Plead the confirmation by Deed, 6 *Eliz.* *Dyer* 229. b.

Condition is to pay all such Arrears, &c. its not sufficient to say, that he had paid all, &c. but he ought to expresse it certain, how much Arrears he had paid amounting to such a sum, 20 H. 6. 31.

Con-

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Condition to perform such a Will, he Pleads he had performed the Will, and recited it not, nor saith how, and not good, *Litt. Rep. p. 2.*

Condition to save O. harmless, &c. and to deliver up the Bond, and to acknowledge satisfaction of a Judgment when paid; The Defendant *protestando* he hath saved O. harmless, *pro plit' dicit*, he hath performed all the Conditions: The Plaintiff replies, he had not delivered up the Bond: The Defendant Demurs, no Averment being that the Mony thereon was not paid; so no breach. *Per Cur.* the Bar is naught by general performance, and the Replication not destroying the cause of Action shewed in the Count is well enough, 2 *Keb. 720.*

If I am bound to enfeoff J. S. of the Mannor of D. In Debt *sur* Obligation if the Defendant Plead performance, he ought to shew where the Mannor of D. is, 15 *Edward 4. 14. b.*

If the Condition be to discharge the Plaintiff, &c. then the manner of the discharge ought to be shewed: But if it be to save harmless only, then *non damnificatus* generally is good enough, 1 *Leon. Case, 95. p. 71. Bret and Audard.* So where the words are, Acquit, Discharge, and save harmless, &c. *non damnificatus* is an insufficient Plea, and its not sufficient only to answer to the Damnification, *ibid.*

If I am bound to convey to you the Manor of D. in Pleading the performance of the Condition, its not sufficient to say, I have conveyed the same Manor, but to shew by what manner of conveyance, 22 Ed. 4. 43. cited 1 Leon. p. 72.

Condition to pay so much yearly for an Instrument of Weaving, and to deliver it up at the end of the Term; the Defendant Pleads, general performance; *per Cur.* they must be specially answered, 2 Keb. 387. *Brown and Tadderby.*

But in many Cases, the Law allows general Pleading, to avoid *prolixity*, and the particulars shall come of the other part, as *Cro. Eliz. p. 253. Aston and Hill.* And therefore, he who Pleads in the Affirmative, shall alledge performance of Covenants generally: As Condition was, if the Defendant at all times upon request, delivered to the Plaintiff all the Fat and Tallow of all Beasts, which He or his Servants should Kill, or Dress before such a day, *that then, &c.* The Defendant pleaded, that upon every request made unto him, he delivered to the Plaintiff all the Fat and Tallow of all Beasts which were Killed by him, &c. *Per Cur.* the Plea is good, *Cro. Eliz. 749. Mints and Bethel.* In the case of Sheriffs, one need not shew how he saved him harmless, because of the infiniteness.

Condition to pay a Moiety of Charges at Suits in Law, &c. the Defendant pleads payment generally, 2 Keb. 762. *Canor and Hurtwel.* Bond

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Bond to collect all the Amerciaments ; he Pleads he collected all, and good, being in the Affirmative, *aliter* if the Condition be of matter of Record, as to be *Non-suit* in all the Kings Courts, 2 H.7.15. a. 4 H. 7.12. b.

Certainty.

THe exprefs certainty (regularly) ought to be pleaded, according to the exprefs words of the Condition, and to shew the performance, 15 Eliz. Dyer 318. *vid. Kel. p. 60.*

Covenant in a Lease, that he hath full Power and Authority to Demise the Land. Lessee brought an Action on this Covenant, it sufficeth him to say, the Lessor had not full Power, and lawful Authority ; and this Assignment of breach is good, for he pursues the words of the Covenant Negative, and the Lessee is a stranger to the Lessors Title ; and therefore the Defendant ought to shew what Estate he had in this Land *tempore dimissionis*, by which it may appear to the Court, he had full Power and lawful Authority to Demise, 9 Rep.60,61. *Bradshaws Case.*

A Man is bound in the Copulative, that he and his Assigns *persolverent omnia onera* : He ought to Plead that he and his Assigns have done this, 28 H. 8 Dyer 27. b.

Condition to pay 10 l. within six Months after the Marriage of the Plaintiff ; the Defendant Pleads, the Plaintiff was not Married ; the Plaintiff replies he was Married. De-

pendant demurs, because it doth not appear, but the Defendant hath paid the 10 *l.* Adjudged for the Defendant, he ought to answer the Condition. *Aliter* after Verdict, *Siderfin* p. 340. in *Hayman* and *Gerards Case*.

Though it be a good Plea regularly to the Condition of a Bond, to pursue the words of the Condition, and to shew the performance: Yet *Coke* said, there was another Rule, that he ought to Plead in certainty the time and place, and manner of the performance of the Condition so as a certain Issue may be taken. As Condition to pay 30 *l.* to *H. S.* *J. S.* and *A. S.* *tam cito* as they should come to the Age of 21 years: The Defendant Pleads he paid those sums *tam cito*, as they came to Age; The Plaintiff Demurs, because its not shewed when they came of Age, and the certain time of the payment; Its an ill Plea. So if the Condition be for performance of Legacies in such a Will; he Pleads performance generally, not shewing the Will nor what the Legacies are, *Cro. Jac.* 359, 360. *Hally* and *Carpenter*.

If I am bound to enfeoffe you of all the Acres in such a Fine, and I shew the Record of the Fine, and averr that I have enfeofft you; this is good: But if it be of Acres in *Middlesex*, he ought to shew the Acres in certain, 28 *H. 8.* *Dyer* 28.

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Conditions to deliver all Writings concerning such Lands; its a good Plea to say generally, that he has delivered all the Writings; *Dolt. placitandi. 62. 4 H. 7. 12. vid. plus* for Conditions performed pleaded generally, and not shewing the certainty, *12 H. 8. 6. b. Sir John Cutts Case, 12 H. 7. 14. b.*

In pleading Negatively, he ought to Traverse all the Condition; as if a Man be bound to pay for so much Bread as the Defendant shall deliver at the common Hall, whensoever he shall be requested by C. he shall say he was not requested by C. to pay to him any Mony for any Bread delivered at the Common Hall, &c. *4 H. 7. 12.*

Where the Party is bound with Condition to warrant Land, the Defendant shall say expressly, that he had warranted the Land; for *pacifice gavisus* is no Plea, *30 H. 8. Dyer 42.*

Condition was, if neither J. S. nor J. B. nor J. G. did not disturb the Plaintiff in his possession of the said Lands by any indirect means, but by due course of Law, then, &c. The Defendant Pleads that neither J. S. nor J. B. nor J. G. did disturb the Plaintiff by any indirect means, but by due course of Law. Q. if it be not a Negative Pregnant, i. e. a Negative which implies an Affirmative. Not disturbed by any indirect means, such a Plea had been good; or not disturbed *contra formam conditionis. Adjurn'.*

If I am bound I shall not go out of *Westminster-Hall* till night, but tarry in the *Hall* till night; or that I will not return to *Serjants Inn* the direct way, but by *St. Giles*, in an Action brought on that Bond, I may plead in *totidem verbis*, 2 *Leon.* p. 197. *Dighton* and *Clark*.

Where a certain Duty accrews by the Deed at the beginning, as by a Covenant, Bill or Obligation to pay Mony, this ought to be avoided by a matter of as high a nature (*viz.*) by Deed, *vid. supra tit^o Accord* pleaded, and, 9 *Rep.* 78. *Peytoes Case*. Sometimes matter *en fait* shall avoid an Obligation, as well as a matter in Writing, as to say the Feme was Covert *de Baron*, &c. 4 *H.* 7. 15.

The Defendant Pleads after the Mony became due, he and the Plaintiff did by *parol* submit to an Award, and sets forth the Award and performance *per tender: Per Cur.* its an ill Plea. Submission by *parol* cannot discharge a Debt by Specialty, *Stiles* 350. *Ludling* and *White*, *Coxal* and *Sharp*. 1 *Keb.* 937.

Inter alia a Bond may be put in Arbitrament; yet, in such case the Arbitrament cannot be pleaded in Bar of the Obligation, Q. if the party hath his remedy on the promise to perform the Arbitrament.

A Bond *inter alia* may be Arbitrated, and mixt with other things: And where the Award is good, the party must resort to Action thereon, 2 *Keb.* p. 734. *Morris* and *Crutch*.

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A Special Plea in Bar is always to be answered, with a Special Replication in the point.

Whereas, such a Mortgage was made of such Land to *J. S. &c.* if therefore the said Land at the day, be redeemed and discharged from all Tithes, &c. the Defendant Pleads the Close was not Mortgaged to *J. S.* The Plaintiff replies it was Mortgaged; he need not alledge it was not redeemed.

J. S. is Bound to Marry the Daughter of *B.* at *Easter* next. *J. S.* Pleads in Bar she died before *Easter*, its a good Replication to say, she was living at *Easter* day, without saying he had not Married her, *Yelv. p. 24. Bayly and Taylor.*

Vid. good Learning as to this Rule *supra* *Titulo* Assignment of a Breach.

In *Momox* and *Warleys Case*, It was taken as a Rule, that the Replication ought to contain sufficient Cause of Action, and sufficient Breach of the Condition; or else the Plaintiff shall not have Judgment, altho' the Issue be found for him, as in Debt on Bond against *A.* and *B.* *A.* Pleads *Non est factum*, *B.* Pleads the Release of the Plaintiff, and its found the Deed of *A.* and the Plaintiff hath Released to *B.* The Plaintiff shall never have Judgment; for upon the Verdict it appears, he hath no Cause of Action, 2 *Leon. p. 100.*

Pleas in Abatement.

IN Debt on Bond, the Defendant demands Judgment of the Bill; for that the Plaintiff in the Obligation was named *J. Thorny de F. in Com. N. Armig'*, and in the Declaration was named *J. Thorny Armig.* and no more. *Respond. ouster* awarded, *Cro. Eliz.* 312. *Thornough* and *Disney*.

After Imparance one cannot plead in Abatement of the Writ, *Stiles* 187. *Weston* and *Plowden*.

Per *Stat. 6 R. 2. c. 2.* it's provided, that the Original shall not be laid in one County, and the Declaration upon a Bond made in another County, if so, the Writ shall abate: But its no good Plea to say, that the Bond was made in another County than where its alledg'd in the Declaration, *Allen* p. 17. *Shalmer* and *Slingsby*.

If the Defendant pleads a Plea in Abatement, as in Debt upon Bond, that another was joyntly bound with him, who is in full life not named, and concludes in Bar; Judgment shall be final against him, *Siderfin* p. 189. *Burden* and *Ferrars*.

Debt on Obligation against the Defendant, Knight and Baronet. The Defendant pleads, he never was a Knight, in Abatement. No Amendment granted, but in *Nisi Cap. per Billam* awarded; because tho' the Defendant after Bail put in by himself, generally he cannot plead in Abatement; yet when the Bail

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Bai is Special, or put in by another, he may plead in by Abatement. Judgment *pro Def.* 2 Keb. 824. Sir William Hicks's Case.

Pleads, that the Plaintiff, *puis darrein continuance*, was made a Baronet, Cro. Car. p. 104. Simon Bennet.

A Plea may be a good Plea in Abatement, though it contain Matter that goes in Bar, *Mod. Rep.* 214.

In Debt *sur Oblig'* against J. S. de S. it's a good Plea to say, that there are two Villages within the County, and none without Addition, 14 H. 6. 8. a.

In Debt *sur Bond.* The Defendant pleads, that after the Writ purchased, the Plaintiff had received parcel, and shews the Acquittance, the Writ shall abate in the whole; and notwithstanding it's a good Plea in bar, as to this part, *Doctrina placitandi* p. 5.

Vide pluis in titulo Payment. *infra*, Payment of parcel, *pendant le Suite*.

Two bring Debt on Obligation, the Defendant pleads the Obligation was made to them and to one B. and that they three had an Action of Debt depending against him, and demands Judgment *si actio*. Demur. And because the Obligation was made to two, upon which they counted, it cannot be intended an Obligation made to three; and if it be a Plea, it's in Abatement of the Writ, and not in Bar. Judgment *pro Querente*, Cro. Eliz. Isham's Case.

Debt

Debt against J. S. *de D. Yeoman*. It's no Plea to say there are two, J.S. of D. Yeom Sen. and Jun. and none without addition: For the Action accords with the Obligation, which is J. S. *de D. Yeoman* without distinction, 9 H.7.21.

Pleas after Imparlanee.

IN Debt on an Obligation, the Defendant imparles till next Term, after he may plead, that the Plaintiff is Outlawed: For the King shall have the Debt on Bond. *Aliter* in Trespass, or Debt, or simple Contract, 16 Ed.4.4. *a. per Bryan.*

Debt against J. S. *de D.* The Defendant imparles; he may after say by Attorney, *Upper D.* and *Nether D.* and none without addition, 18 Ed.4.9. 21 Ed.4.1. *b. contr.*

Variance between the Obligation and the Writ, may be pleaded after Imparlanee in another Term, for the Bond always remains in Court; but after Imparlanee, Variance between the Testament and Letters of Administration shall not be pleaded; for the Testament shall be but once shewed in Court, 36 H.6.32,33. 38 H.6.2. 19 H.6.7.

The Defendant Imparles till another Term, and then he pleads Tender of the Mony at the day and place, and that no person was there to receive it, and that he is now ready, and saith not *Touts temps prest*; yet it's a good Plea: For he had excused himself

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himself of the Forfeiture by this Plea, and no Estoppel shall be by the Imparlanee, to plead that he is now ready, *Doct. placitand.* 388, 389.

In Debt on Bond, the Defendant imparles Specially, *scil.* ——— *salvis omnibus & cunctis modis advantagiis* ——— and after he pleads the privilege of the Exchequer, that he was Surveyor there: *Per Cur.* he cannot plead so, *Siderfin* p. 318. *Trussel* and *Maddin.* 2 *Keb.* 103.

A Plea in Abatement ought to be pleaded before Imparlanee: As, the Defendant to Debt on Bond appears and imparles, and after Imparlanee pleads, that he is Earl of *Nova Albion* in *Ireland*, and ought to be impleaded by that Name, *Stiles* p. 187. *Weston* and *Plowden.*

After Imparlanee, the Defendant pleaded in Abatement, that one *Vincent*, not named, sealed, &c. It's no Plea after Imparlanee, and a *Respond' onster* awarded, 2 *Keb.* 795. *Pitt* and *Nosworthy.*

Debt for 300 *l.* The Defendant after a general Imparlanee demands *Oyer*, and pleads Specially it was but for 30 *l.* *Non allocator* after general Imparlanee; then the Defendant pleaded *Non est factum*, which was the proper Plea in the Case, 1 *Brownl.* p. 70.

It was Ruled, that after Imparlanee in Debt upon Bond, the Defendant shall be received to plead, that he was always ready to pay; tho' 13 *Eliz.* 306. *Dyer* seems contrary, and was so urged.

Repli

Replicatio Querentis, That the Defendant ought not to be admitted to plead a Variance between the Declaration and the Bond, in abatement, after Imparlance general, *Modus Intrandi*, p. 200.

Obligations.

Pleadings.

Acceptance, Concord.

CONDITION to deliver twenty Quarters of Wheat: The Defendant pleads, that *pendente billa* the Plaintiff had accepted fifteen Quarter, and demands Judgment of the Bill: No Plea, for it's Collateral, and not parcel of the Sum contained in the Obligation; and if it be a Plea, it is in bar, and not in abatement, *Cro. M. 33, & 54 El. Stone versus Radish.*

Issue is taken, that he had not accepted; now though its no Plea, and so no Issue; yet its helped by the Statute of *Jeofails*; and the Plaintiff had Judgment, *Cro. El. p. 260. M. 33 & 34 El. Andrews and Kinck.*

Debt *pro 7 l.* the Defendant pleads *solvis ad diem*. The Jury find 50 s. pareel of it paid, and that the Defendant then delivered to the Plaintiff certain Hats to the value of the residue, which he accepted. It was Adjudged against the Defendant, for this is no payment, he might have pleaded it specially, *Cro. M 35 & 36 El. Tiblethorp and Hunt.*

Debt

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Debt sur single Bill : The Defendant pleads, he enfeoffed the Plaintiff of Lands in satisfaction of that Debt. The Plaintiff demurs : *Per Cur.* it's a naughty Plea to a single Bill ; otherwise , had it been upon a Bond with a Condition to pay Mony , 1 *Brownl.* 70. *Glyver and Lease.*

Debt sur Bond : The Defendant pleads another Bond given to the Plaintiff in satisfaction of that Bond, and acceptance at the day of payment. Ill Plea ; for one *chose* in Action cannot be given in satisfaction of another , unless it were payable at a day before the other Debt, 2 *Keb.* p. 804. *Street and Buckner.* 1 *Brownl.* p. 47. *Lovelace's Case*, *Stiles* p. 339. *Brock and Vernon*, *More N.* 1147. 2 *Keb.* p. 804. *Street and Buckner*, *Vid. pluis Litt.* p. 58. *Ene's Case*, 5 *Rep.* 44. *Lord Cromwell's Case*, cited in *Higgins's Case*. No, though a Stranger give the Bond, 1 *Brownl.* p. 71. *Hawes and Birch.*

If Issue be joyned on the acceptance, and the Plaintiff be Nonsuit. Q. If this Plea be such a Confession of the Action , as the Plaintiff shall have Judgment, *Hobart* p. 68, 69. B. R. *Lovelace and Colket*, *Randiff and Strutt.*

The Defendant pleads, that the Plaintiff after the day of Payment, and before the Writ brought, did accept of a Statute-Staple for the same Debt, in full satisfaction of the Obligation. It's an ill Plea ; for a Statute is but an Obligation of Record, and cannot drown another which is not of Record, *Sir R. Braintbwait's Case*, cited in 6 *Rep.* 44. h.

Higgin's Case. Vid. Co. Lit. 212. b. 5 Rep. 117. s. contra.

Payment of a lesser Sum, and acceptance in full satisfaction pleaded; you may either traverse the payment, or the Acceptance; but its more proper to joyn Issue upon the payment, *Stiles* p. 239. *M.* 1650. *Boys* and *Cranfield*.

Condition to pay 10*l.* to a Stranger by *Michaelmas*. The Defendant pleads payment of a lesser Sum before the day to him. The Plaintiff demurs; the Plea is ill as to a Stranger, 2 *Keb.* p. 628. *P.* 22 *Car.* 2. *Chapman* and *Win.*

Debt *pro* 43 *l.* The Defendant pleads 39 *l.* paid before the day, which the Plaintiff accepted in satisfaction: The Plaintiff joyns Issue, *Non recepit in satisfactionem*: The Defendant Demurs, it's ill. He should have said, *Non solvit*, 3 *Keb.* p. 28 *Car.* 2. fo. 629. *Percival* and *Colshawe*.

The Defendant pleads, the Condition was to pay a lesser Sum at a day, and that before the day he paid in satisfaction: *Per Cur.* It's an ill Plea, not having demanded Oyer of the Condition, 3 *Keb.* p. 708. *Mich.* 28 *Car.* 2. *Clatch*.

The Defendant pleads, That the Plaintiff before the day accepted a lesser Sum in full satisfaction of a greater. It is a good plea; but then he must plead, he paid that lesser sum in full satisfaction, and that the Plaintiff received it in full satisfaction, *Pinnel's Case.* 5 Rep. 117. *More* N. 847. *Penny* and *Cote*.

For

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For the manner and tender of Payment it shall be directed by him that made it. I am bound to pay you 10*l.* at *Westminster*, and you request me to pay you 5*l.* at the day in *York*, and you will accept it in full satisfaction of the whole 10*l.* its a good satisfaction of the whole, 5 *Rep.* 117. *Pinnel's Case*.

Condition is for payment of 20*l.* the Obligor at the time appointed, cannot pay a lesser Sum in satisfaction of the whole. But if the Obligee do receive part at the day, and thereof make Acquittance under his Seal in full satisfaction of the whole, its sufficient; for the Deed amounteth to an Acquittance of the whole, *Co.Lit.* 212*b.* *Pinnel's Case*, 5 *Rep.* 117*b.*

If the Obligor pay a lesser Sum either before the day, or at another place than is limited by the Condition, and the Obligee receive it; this is a good Satisfaction, *Ibid.*

Not only things in possession may be given in Satisfaction; but also if the Obligee accept a Statute in Satisfaction of the Mony, its a good Satisfaction. *Ibid.*

Obligor is bound to pay 100 Marks at a day, and at the day the parties Account together, and for that the Obligee did owe 20*l.* to the Obligor, the Sum is allowed, and the residue of the 100 Marks paid: This is a good satisfaction, tho' the 20*l.* was a *chose* in Action, and no payment was made thereof but by way of Retainer or Discharge, *Co.Lit.* 213, &c.

Condition to make assurance of Lands to such uses. The Defendant pleads, he made a Feoffment to other uses, which the Plaintiff accepted. Ill Plea, 1 *Brownl.* 60. *Potter and Tompson.*

Where the Condition is for payment of Mony, if the Obligee accept an Horse, &c. in satisfaction, its good: But if the Condition were for the delivery of an Horse, &c. there tho' the Obligee accept Mony or other thing for the Horse, &c. its no performance of the Condition: So a Condition is to acknowledge a Recognizance of 20 *l.* &c. if the Obligee accept 20 *l.* in satisfaction of the Condition, yet the Condition is broken. So of all other Collateral Conditions, *Co. Lit.* 212.*b.*

If a Condition be to pay Mony to a Stranger, if the Stranger accepts an Horse, or other Collateral thing in satisfaction, its no performance of the Condition; for there the Condition must be strictly performed: But if the Condition be, that a Stranger shall pay to the Obligee a Sum of Mony, the Obligee may receive an Horse in satisfaction, *Co. Lit. ibid.*

To Debt on Bond, the Defendant pleads, it was agreed, (before the Forfeiture of the Bond for 300 *l.*) between the Plaintiff and divers other Creditors of the Defendants, that the Defendant should assure divers Lands to be sold, and the Mony to be paid, and he assigned several sums of Mony to them, which they accepted, and avers *in facto*

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facto that he sold the Lands to them, and made a Letter of Attorney to them to receive the Sums of Mony. The Plaintiff demurs; because the Indenture sounds in the nature of a Covenant, and if so, it shall not be in satisfaction, being in it self no satisfaction, nor pleadable in satisfaction of that Debt. Also admitting it had been a good satisfaction, if performed, yet part thereof not being performed, its no bar to this Action, *Cro. Car. 193. Simonds and Mendsworth.*

A Concord or Verbal Agreement cannot discharge a Specialty: As a Condition for the performance of Covenants in Articles of Agreement. The Defendant pleads an Agreement between the Plaintiff and him, that he should grant 5 *l. per Annum* for life in discharge, which Grant he made, and the Plaintiff accepted. Judgment *pro Querente*, being only a Verbal Agreement.

Cro. fac. fo. 649. Noys and Hopgood, and so *Cro. Eliz. pag. 697. Hayford and Andrews.* If the Defendant pleads before the day of payment, the Plaintiff in respect of a Trespass made by his Beasts in the Defendants Lands, gave him longer day. Its no Plea; for an Agreement by Parol cannot dispence with an Obligation.

Condition to pay 40 *l.* on *Michaelmas-Eve*. The Defendant pleads Concord, that if he gave him an Hawk and 20 *l.* at *Michaelmas-day*, the Obligation should be void; and avers he did so, and the Plaintiff accepted it. Its an ill Plea; for it appeareth

for Non-payment of the Mony at the day the Bond was forfeited, and so became single, which cannot be discharged by such naked Averment *en fait* of such Acceptance. But,

Acceptance before the day had been a good Discharge, *Cro. Eliz.* p. 46. *Anonymus.*

Condition to pay 11 *l.* on the 12th of February; the Defendant pleads Accord the 8th of February, that if he paid 8 *l.* on the said 12th of February, that he would accept it for 11 *l.* and pleads Tender at the day, & *uncore prist*: *Per Cur.* Concord is no Plea without satisfaction, *Cro. M.* 32 & 33 *Eliz. Tassal and Shaw.*

Agreement to pay part, and promise to pay the rest, no Plea to a Bond, *Cro. M.* 35 & 36 *Eliz. Balfon and Baxter.*

Had he pleaded a lesser Sum paid before the day, and at another place, in satisfaction of a greater sum, it had been good, *Ibid.*

Condition to deliver twenty Quarters of Barly; the Defendant pleads in Abatement, that *pendente billa*, that the Plaintiff had accepted fifteen, parcel of the said twenty. Ill Plea; for it is Collateral, and not parcel of the Sum contained in the Obligation; and if it be a Plea, its a Plea in bar, and not in abatement, *Cro. Eliz.* 253. *Doct. pla. 6. Viâ plus in titulo Payment infra.*

Condi-

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Condition to make a sufficient account of all Rents, Revenues, &c. The Defendant pleads, That before the Feast, he Let to the Defendant an House, &c. in full satisfaction of all manner of Accounts; to which he agreed and entred. *Nul Plea, Dyer 1. Case 1. Vid. plus ibid.*

Payment pleaded.

OF payment and acceptance of a lesser Sum before the day, in satisfaction of a greater. *Vid. supra tit. Pleading, Acceptance, Concord, &c.*

Payment of parcel, hanging the Writ, is a good Plea to the Writ, 5 H. 7. 41. an Acquittance of the receipt of part, hanging the Writ, goes to all the Writ. *Et Nota*, Where payment is not a Plea in bar, receipt pendant the Writ, is no plea to the Writ, *Doct. placit. 108.*

The Defendant pleads acquittance for parcel; if the Plaintiff acknowledge his own Acquittance, he abates the whole Writ: *Per Coke*, the Plaintiff shall recover all that the Defendant acknowledged; and as to what he had received, the Plaintiff is to be amerced, 3 H. 6 48.

The Defendant pleads after the day of the Writ purchased, (*viz.* such a day) he paid to the Plaintiff 60*l.* parcel thereof, which he received. Judgment of the Writ. The Plaintiff demurs specially, because he shewed not any Acquittance or Release testi-

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fyng it. Judgment for the Plaintiff, *Cro. Eliz.* p. 884. *Colbrooke and Foster.*

In Debt on a single Obligation, payment without acquittance is no plea. Otherwise in Debt on Obligation with Condition, 28 H. 8. *Dyer* 25. b. 15 Ed. 4. 6. a. 33 H. 8. *Dyer* 50. b. 51. a.

Payment with acquittance, pleaded in an Action of Debt on a Bond, is not double; because the Acquittance only is issuable, and the payment is but Evidence, 1 H. 7. 15. b.

If the Plaintiff by Deed had confessed himself to be satisfied of the Debt, though he had received nothing; yet this a good bar, 30 H. 6. *iii.* Bar 37. 5 Rep. *Pinnel's Case*, fo. 117. b.

Condition to pay 70 l. (*viz.*) 35 l. at one day, and 35 l. at another day, at the *Temple Church*. The Defendant pleads payment of the 70 l. at *Ludlow*, *secundum formam & effectum Conditionis prædictæ*. Verdict *pro Quærente*.

Assigned for Error, for that he ought to have pleaded several payments; but *per Cur.* its good enough, *reddendo singula singulis secundum formam & effectum, &c.* *Cro. Eliz.* p. 281. *Fox versus Lee.*

Condition was, to pay 20 l. the 7th day of *May*, 1558, at the House of the Defendant in *S.* It was found by Verdict, that the Defendant paid the 20 l. before the 7th day of *May*, at the said House; but not *solvit* the 7th day of *May*. It was Adjudged a good pay.

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payment, *More N. 400. Bond and Richard
son.*

Debt on Bond by a Bishop; the Defendant pleads, he paid the Mony at the day to J. S. Bailiff of the Plaintiff, and by his commandment, and avers that this came to the use of the Bishop. This Averment makes the plea double; for if the Bayliff receives this by command from the Bishop, notwithstanding this doth not come to his own use; yet, this is a sufficient discharge to the Defendant, *22 Ed. 4. 25. a.* But,

In Debt on Obligation, payment of the Mony to J. S. by commandment of the Plaintiff, is no plea, without shewing that the Plaintiff was indebted to him, *27 H. 6. 6. b.*

*Where mistake in pleading the Sum, or the Time,
is aided, and where not.*

IN Debt on Bond of 200 l. Condition to pay 105 l. &c. The Defendant pleads payment of the aforesaid 100 l. at the day. The Plaintiff replies *quod non solvit prædict'* 105 l. *Et hoc petit, &c.* and it was found he did not pay the 105 l. Judgment *pro Quer'*, and Error assigned, for that there is not any Issue joyned, and so the Verdict ill, and Judgment erroneous: The saying, *Secundum formam & effectum Conditionis* shall not help it, as if it should be intended the aforesaid 105 l. *Cro. Jac. p. 585. Sandback and Turvey.* Such a Case was in *Cro. Car. fo. 593. Derby* and

and *Hemming*; and no Repleader could be granted, but Judgment was reverst.

But where the Defendant pleaded to Debt on Bond, payment of 50 l. on the 14th of *Jun. 11 Jac.* The Plaintiff replies, he did not pay it the said 14th day of *August*, *Anno 11. supradicto quas ei ad eundem diem solvisse debuisset*, and Verdict found that he did not pay it the 14th day of *June*; yet 'twas no Error: For the Defendant's Plea was according to the Condition; and the Plaintiffs Replication, *quod non solvit* the said 14th day was good, and the misnaming the Month [*August*] is idle and superfluous, & *pradicto quarto decimo die* had been sufficient. But in the other cases of mistaking the Sum, there was another Sum in the Plea of the Defendant, than was in the Condition; and another Sum in the Replication, than is in the Bar; and so no Issue.

In Debt on an Obligation, the Defendant pleads, *Solvit ad diem, & de hoc ponit, &c.* where it should be *hoc paratus, &c.* for then the Plaintiff should have replied, *Non solvit; Et hoc petit, &c.* so there had been an Affirmative and a Negative. *Per Cur.* forasmuch as the Plaintiff joyns Issue, and the Jury find he hath paid, its good enough, and aided *per Stat. Jeofails*; and Judgment was not arrested, *Cro. Car. 3 16. Parker and Taylor. So 3 Keb. 29 Car. 2. p. 764. Helder and Brudnall.*

Condition

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Condition to pay a Stranger at three payments; the Defendant on Oyer pleads payment according to the Condition of another Obligation to the Stranger. The Plaintiff demurs; and the Plea is Ill, because the other Bond to the Stranger, is not set forth, as the particular days of payment, 3 *Keb.* 612. *Nichols* and *Nichols*.

Release Pleased.

J. S. makes an Obligation dated and delivered on the first of *May*, and on the first of *June* following, the Obligee makes a Release to the Obligor, dated the first of *March*, and delivered the first of *June*, by which he releaseth all Actions *ab origine mundi*, until the date of the Release: *Per tous* Justices, the Obligation is not released, *Cro. Eliz.* p. 14. *Sir William Druries Case*.

T. J. Doth acknowledge himself fully satisfied and discharged of all Bonds, Debts or Dues whatsoever by *T. O.* this acknowledgment by Deed is in Judgment of Law a Release of all Bonds, tho' the word Discharge is not properly said of the part of Obligee, but of the Obligor, 9 *Rep.* 52. b. *Hickmotts Case*.

Debt on a Bond not forfeited at the day of payment, being not then come; the Defendant Pleads a Release, and found against him in Arrest of Judgment, it was adjudged for the Plaintiff, for the Defendant did not take advantage of it as he might, but waved
it,

it, and pleaded a collateral matter, which was found against him, *Cro. Eliz.* 68. *Frisbie Case.*

Debt on Bond, dated the 24 of *June*, 9 *Car.* The Defendant pleads that the Plaintiff the 22 of *Feb.* 10 *Car.* Released to him all Actions and Demands which he had, &c. to the day of the date thereof: The Plaintiff demands *Oyer* of the Release, which was a Release of all Actions unto the 14 of *January*, before the date of the Release; for this *misprision* the Plea was adjudged ill, *Cro. Car.* 426. *Dyer and White.*

A Man may not release a personal thing, as an Obligation upon a Condition subsequent, but the Condition will be void, because a personal thing once suspended is extinguished perpetually; but a Man may release it upon a Condition precedent, for there the Action is not suspended, until the Condition performed, 1 *Rolls Abr.* p. 412. *Barkley and Parker*, adjudged on Demurrer. Where the Release was of an Obligation, with a *Proviso* that he who releaseth this might enjoy 120 *l.* due by *J.S.* to the Obligor at a day to come then after; which the Court adjudged a Condition precedent, because the 120 *l.* was not due at the time of the Release, but at a day to come, 1 *Rolls Ab.* 415. *Mesme Case.*

In Debt on a Bond of 200 *l.* for payment of 104 *l.* at a day, on *Oyer* and Entry of the Bond and Condition; The Defendant Pleads, the Plaintiff did Release *prædictum*
Scriptum

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Scriptum Obligatorium, by the name of an Obligation in 200 l. for the payment of an 100 l. Its not a good Plea, tho' it was averred there was no other Bond made by the Defendant to the Plaintiff; for tho' a greater sum includes a Lesser as to tender, yet the Debt and Duty is entire, and therefore cannot be discharged by a Release of a lesser Sum, *Allen p. 71. Chace and Gold.*

T. G. Covenants with another, that B. A. a Stranger shall pay to A. a Stranger and the Covenantee 10 l. *per Annum*, A. the Stranger takes Buck to Husband, who releaseth the payment; he cannot Release it; for this was not any Debt or Duty in Buck or his Wife; they had nothing in it, nor remedy; but for non-payment the Covenantee shall have an Action of Covenant, *Rolls Rep. 196. Quick and Harris.*

Bond taken in the name of the Plaintiff as Trustee, for the younger Brothers, from the elder Brother, Conditioned to pay younger Brothers Portions; The Defendant pleads a Release of all Actions, Suits, and all Debts on the Plaintiffs account: *Per Cur.* it must be intended of all Debts whereof he hath the sole disposition, and so he had not here. Judgment *pro Querente*, 2 *Keb. 530. Stokes and Stokes.*

Debt on Obligation, Conditioned to perform Covenants in a Lease for years: The Defendant pleads Conditions performed: The Plaintiff assigns a Breach of non-payment of Rent: The Defendant to this rejoyns

a Release of all demands, and *per Cur.* the Rent is not released by this, being a Rent Executory, and not a sum in Gros; and Judgment *pro Querente*, *Siderfin. Hen and Hanson.*

Two are bound joyntly and severally, a Release to the one Obligor is a Discharge to the other; but a Release to an Executor of a joynt Obligor is void, *Cro. Car.* 551. *Dennis and Paine*, 1 *Keb.* 936. *Scot and Littleton.*

The Defendant pleaded, that he was bound in the Bond, *simul cum R. G.* to whom the Plaintiff had released all Actions and demands the said first of *May*, (which was the date of the Obligation;) the Plaintiff by Replication shewed that after the Obligation Sealed by *R. G.* he released to him, and that afterwards the same day the Plaintiff Sealed the Bond: This Release *per Cur.* doth not discharge the Defendant, *Cro. Eliz.* p. 161. *Mannings and Townsend.*

Two are sued joyntly and severally; the Obligee brings Action against the one, and makes a *Retraxit* of his Suit, *Q.* if this *Retraxit* is in nature of a Release, and so if pleaded it be a Bar to Sue the other. But in *Cro. Jac.* 211. *Beechers Case*, its an absolute Bar, had it not not been for other faults in the entry, *Cro. Car.* 551. *Dennis and Paine*, *March 95. Mesme Case.*

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Two are Bound, Obligee releaseth to one, provided, that the other shall not take benefit of this Release, its a void *proviso*, *Lit. Rep.* 191.

Debt on Bond, the Defendant pleads a Release of all Actions and Suits in Bar. The Plaintiff demands *Oyer*, and an exception of one Bond was therein contained: The Defendant replies, that was the Bond in Suit, and that the sum excepted and the person are all one; the Defendant demurs; for Actions and Suits being released serve to no purpose, the Obligation being excepted: *Per Cur.* the Obligation it self being excepted, all Actions and Suits concerning it are also excepted, *Cro. Eliz.* 726. *Brook and Wheeler.*

The Defendant pleads a Release and sets it forth, &c. to be fully satisfied all Bonds, Debts and dues, &c. and that he (the Obligee) is to deliver all such Bonds as he hath yet undelivered to T. O. (the Obligor) except one Bond of 40 l. yet unforfeited, which is for the payment of 22 l. and wherein the said T. O. and R. O. his Brother stand bound to him, and saith, that he ought not to be barred, for the Obligation of 40 l. so excepted, and the said Obligation *hic in Curia prolat'* are one and the same. Resolved, that the said exception shall extend to all the Premisses, and not only to the clause of delivery: But by the Plaintiffs confession in his Replication, it appearing the Bond excepted was joyn't, and he bringing it against the Defendant only, hath abated his own Writ, 9 *Rep.* 52. *Hickmots Case.*

Release

Release of an Obligation, bearing date the same day, and the Release is of all, &c. *usque ad diem datus*, this doth not discharge the Obligation, 2 Rol. Rep. p. 255. Green and Wilcox.

The Plaintiff and Defendant submitted themselves to Arbitrament; and it was Awarded, that there should be a Release made of all Reliefs, Duties and Amerciaments, and this Release pleaded in Bar to Debt upon the Bond. *Per Cur^o*, [*Duty*] extends to the Obligation, and it shall be a discharge of it, *Cro. El. p. 370. Rotheram and Crawley.*

Condition to pay 7 l. upon the Birth-day of the Child of *J. L.* which God should send after the date of the Bond. This is a contingent Debt, and the Condition may not be discharged; and a Possibility may not be released: *Qu.* if the Obligation may be, *Yelv. p. 192, Neale and Sheffield.*

Sir *H. Stile*, and *Tho. Brooke*, were joyntly and severally bound to *W. Tully*: After the day of payment incurred, *Tho. Brooks* makes his Will, and makes *Mary Brooks* his Wife Executrix, and dies; and after *William Tully* makes his Will, and by his Will releaseth unto *Mary Brooks* all the Debts which *Thomas Brooks* her Husband did owe to him at the time of his death. *Per Cur.* a Will cannot release a thing created by Deed, and so discharge Creditors. *Q. Stiles p. 286. Stile and Tully.* Sir *H. Stile* could have no Relief in Chancery.

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G. was bound to R. with Condition to pay 100 l. but this was in trust to the use of M. W. during her life, and after to G. P. G. P. may not release the Bond, neither in Law nor Equity, during the life of M. W. But had it been to his own sole benefit, it had been good in Equity, *Lit. Rep.* 144. *Ganford's Case.*

An Obligation to perform all Covenants in a Lease. The Lessor releaseth to him all demands before any Covenant broken, this is no release of the Obligation, *Lit. p.* 87.

Two are joyntly and severally bound in an Obligation; if the Obligee releaseth to one of them, both are discharged, *Co. Lit.* 132. &c.

A release of all Actions by the Obligee before the day of payment, he shall be barred of his Duty for ever; for it is *debitum in presenti, &c.* and the right of the Action is in him. So by a release of all demands, *Co. Lit.* 291. b. 292. b.

The Defendant pleads, that the Plaintiff by Indenture, &c. did Covenant, that he would not sue the Bond before *Michaelmas*. *Judgment si actio. Cur. pro Querente.* its only a Covenant, and shall not enure as a Release; and is not to be pleaded in bar, but the party is put to his Writ of Covenant. Had it been a Covenant he would not sue at all, it might have mounted to a Release, *Cro. Eliz.* p. 352. *Dinx and Jeffreys, 1 Anders.* 307. *mesme Case.*

But if the Defendant pleads, that the Plaintiff by Indenture shew'd, Covenanted, that if he paid 100 l. at, &c. that then the Obligation should be void, and avers he paid it; its a good Plea in bar, and he shall not be put to his Writ of Covenant by circuitry of Action, *Cro. Eliz. p. 623. Hodges and Smith.*

An Obligation bears date the 1st of May, and is delivered 20 days after, and the Obligee makes a Release the 2^d day of May, and delivers this the same day, this Release is no bar of the Obligation: But in this case, if the Obligee will bring his Action, and count on an Obligation bearing date the 1st of May, and doth not say that this was *primo deliberat* the 20th day, the Defendant shall bar him by the Release; for that the Release was made after the first day, *scilicet* the second: And the Plaintiff shall not reply and shew the first delivery of the Obligation was the 20th day, for that this is a departure; for he ought to have alledged this at the beginning, and so it shall be taken, that the Obligation was delivered according to the purport of the Obligation, § H. 7. 27. a.

J. S. was bound, that J. D. the Apprentice should make an account, and pay Moneys; and afterward the Obligee *per Deed* releaseth to the Servant, and not to the Obligor. If the Release were made before any Forfeiture, the Obligation is saved, and the Release may be pleaded; but otherwise if after Forfeiture, because an Obligation once forfeited, cannot

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cannot be saved by any Act or Release made or done to a Stranger, 3 Leon. 45. *Anony*
mn.

Pleadings.

Tender, & Uncore prist.

Tender at the day and place, of the Mony; and the Plaintiff refused it, and the Mony brought into Court. The Plaintiff joyns Issue, that there is no Tender and Refusal. Verdict *pro Def.* the Plaintiff hath lost his Mony, for it is a Refusal on Record, and the Defendant must have his Mony out of Court, *Stiles* p. 388. *M.* 1653. *Benskin* and *Herrick.*

If the Obligor tender the Mony at the day and place, and the Obligee refuseth it, *In debt sur ceo Oblig.* if the Defendant pleads Tender and Refusal, he must also plead he is yet ready to pay it and tender the same in Court. *Aliter*, if it were to be paid to a Stranger. But if one is bound in 200 Quarters of Wheat, to deliver 100 Quarters; if the Obligor tender at the day 100 Quarters, he shall not plead *Uncore prist*, for they are *bona peritura*; but the Sum of Mony is not lost per Tender and Refusal, because its a Duty and part of the Obligation. Where the Condition is collateral to the Obligation, (that is) not parcel of it, there Tender and Refusal is a perpetual bar, and he shall not be driven to plead *Uncore prist*: As a man is bound in 100 l. to deliver Corn or Timber, to perform Award; as a man is bound by

Award to pay 20 l. &c. *Co. Lit.* 207. *Anders.* p. 4. *Pannel and Neal.* *Dyer* 1 *Eliz.* 167. 9 *Rep.* 97. *Peytoe's Case.* *Vid. Doct. placitand,* p. 389, 390, 391. 1 *Brownl.* 61.

If a man make a single Bond or acknowledge a Statute or Recognizance, and afterwards makes Defeazance to pay a lesser Sum at a day, if the Obligor or Conizor tender it at the Day, and the Obligee or Conizee refuse it, he shall never have any remedy by Law to recover it; because no parcel of the Sum contained in the Obligation or Statute, the Defeazance being made at a time after, *Co. Lit.* 207. *Vid. More N.* 114.

Condition to perform Covenants by a Stranger, one whereof was to pay 20 l. to the Obligee. The Defendant saith, The Stranger tendred, and the other refused, & *ne dit Uncore prist.* *Bon Plea,* 27 *H. 8.* 1. 19 *H. 8.* 12.

If one be bound, that a Stranger shall make an Obligation to the Obligee, it sufficeth to say that the Stranger tendered this and the Obligee refused it, without saying *Uncore prist,* 10 *H. 6.* 16.

Condition was, If a Stranger paid the Mony at T. then, &c. He pleaded a Tender by the Stranger, and saith not *Uncore prist*: *per Cur.* its no bar; but if they were joynly bound, it would be well enough, 2 *Keb.* 178 *Browne's Case.*

If Mony be tendered, and none ready to receive it; and after he to whom the Mony is paid, demands the Mony, and the other refuseth,

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refuseth, an Action is brought and Tender pleaded; yet the Defendant shall pay Damages from the time that the Mony was demanded, 1 *Brownl.* p. 71.

After Impar lance, in Debt *sur* Bond, the Defendant shall be received to plead, he was always ready to pay, *Winch.* p. 4. *Dost. placitandi* 388, 389.

A Bond to pay 500 l. The Defendant pleads (after Impar lance) Tender at the day place, and that none was there to receive it, and that he is yet ready to pay. The Plaintiff demurs, because he doth not plead *tous temps prist*; and although he tendered it at the day, whereby he saved it for the time; yet if he doth not plead *tous temps prist*, it shall be intended he hath forfeited his Obligation. Q. If it be a good Plea. *Vid. Cro. Jac.* p. 617. *Steward and Coles.*

The Defendant pleads Tender at the day, and *Tous temps prist*. The Plaintiff received the principal sum in Court, and Judgment to acquit the Defendant of the sum received. And the Plaintiff to have Damages alledgeth a demand of the Mony from the Defendant; and thereupon it was demurred, and Adjudged against the Plaintiff: For if the Plaintiff would have Damages, he ought not to receive the Mony, but to suffer it to remain in Court; for after Judgment, *Quod eat inde sine die*, no Issue can be taken, *Cro. Jac.* 126. *Harrold and Clothworthy.*

Cro. El. p. 73. Allen and Andrews; where he need not plead *Uncore prist*, where an Obligation is made, and afterwards a Defeazance is made thereof, if he pay a lesser sum, &c. he needs not say *Touts temps prist*; for by the Tender he was discharged of all, *Cro. Eliz. 755. Cotton's Case.*

Debt on Bill to pay 50 l. on demand, and on Non-payment the Defendant to pay 100 l. Action is brought for the 100 l. The Defendant pleads there was no demand. The Plaintiff demurs; and *per Cur.* the Action is a demand of the 50 l. but no cause to forfeit the 100 l. But the Defendant should have pleaded tender of the 100 l. and *Uncore prist*. But on Bond on Award, to pay on demand, being Collateral, its lost *sans* demand, therefore no *Uncore prist* need be. But where the Condition of an Obligation is to pay on demand, that is a distinct Deed from the Bond, and there is no Title to the Forfeiture *sans* demand; but the Debt of 50 l. here is not lost *per* not demanding, 3 *Keb. 577. Remsee and Rutter.*

Condition was, that whereas the Defendant was Executor to *M. D.* that if the Defendant should perform, fulfil, &c. the Will of *M. D.* in all Points and Articles, according to the true intent and meaning thereof, that then, &c. and pleaded further, that the same *M.* by his Will bequeathed to *J. S.* 3 l. He pleads as to the said 3 l. he is, and always was ready to pay the same to *J. S.* if he had demanded it. The Plaintiff Demurs: *Per Cur.* the

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the Plea is well: For this Obligation (the Condition being general to perform the Will) had not altered the nature of the payment of the Legacy, but the same remains in such manner as before, payable *sur Request*, and not at the peril of the Defendant, 1 *Leon.p. 17. Fringe and Lewis.*

A. is bound to *B.* to pay 10 l. to *C.* and *A.* tenders to *C.* he refuseth, the Bond is forfeited; for the Obligor having taken upon him to pay it, his Refusal cannot satisfy the Condition. So to enfeoff a Stranger, and he offers to enfeoff him, and the Stranger refuseth, the Obligation is forfeit. *Aliter* if the Feoffment had been by the Condition to be made to the Obligee, or to any other for his benefit or behoof; there tender and refusal shall save the Bond. But if *A.* be bound to *B.* with Condition that *C.* shall enfeoff *D.* if *C.* tender, and *D.* refuseth, the Obligation is saved; for the Obligor hath undertaken to do no act, but that a Stranger shall enfeoff a Stranger. *Co. Lit. 209. a.*

Non est factum.

In what cases Non est factum is a good Plea; and in what cases, and where a Special Non est factum may be found.

IN every case where the Obligation is void, he shall conclude *Non est factum*: As a Feme Covert shall plead *Non est factum*; for its void by her. So where a Deed is razed or interlined; so where the Obligor was not Lettered. Otherwise, where the Deed is only voidable, for there he shall shew the Special Matter, and conclude Judgment *si actio*, 1 H. 7. 15. *Downe's Case*. As an Infant pleads at the time of making the Bond he was within Age, he shall not conclude *issint Non est factum*; but Judgment *si actio*.

When the Deed is voidable, and so remains at the time of the Pleading (as in case of Sealing a Bond by an Infant, or Durels) here he cannot plead *Non est factum*, but it must be avoided by Special Pleading, with conclusion of Judgment *si actio*, 5 Rep. 119. *Whelpdale's Case*.

When an Obligation, or other Writing, is by Act of Parliament enacted to be void, the party who is bound cannot plead *Non est factum*; but must plead the Special Matter, and conclude Judgment *si actio*. As on Bond made to the Sheriff against 23 H. 6. cap. 10. or a Bond made against the Statute of

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of Usury, 5 Rep. 119. *Whelpdale's Case*. Hob. p. 72, 166.

In all cases, when the Obligation was once a Deed, and after before Action brought becomes no Deed, either by rasure, addition, or other alteration of the Deed, or by breaking off the Seal: In these cases the Defendant may safely plead *Non est factum*; for at the time of the Plea, which is in the Present Tense, it was not his Deed, 5 Rep. 119. *Whelpdale's Case*.

If the Condition of an Obligation be altered, or interlined, this shall avoid the Obligation, as well as the Condition. *Aliter* in a Defeazance, 28 H.8. *Dyer* 27.b.

In Debt on Bond: The Special Verdict was, That the Defendants were bound to the Plaintiff, being Sheriff, in 60 l. *Noverint nos, &c. teneri B. Winchcombe Armig', in 60 l. &c.* with Condition to appear; and after the Delivery these words [*Vic' Com' Oxon'*] were interlined without Notice or Command of the Plaintiff; *Et utrum factum prædict' sit factum prædict' Henrici*, and Resolv'd per Cur.

1. When a lawful Deed is razed, by which it becomes void, the Obligor may plead *Non est factum*, and give the Matter in Evidence; for at the time of the Plea pleaded, it is not his Deed.

2. When any Deed is altered in a Point material by the Plaintiff himself, or by any Stranger, without the privity of the Obligee, be it by addition, razing, interlineation, or tractation of a Pen through the midst of any

any Material word; by this the Deed becomes void: As, if one be bound in 10 l. and after Sealing 10 l. is added, to make it 20 l. its void. So if the Obligee himself alter the Deed by any of the said ways, though it be in words not Material, yet the Deed is void. But if a Stranger without his privity alter it in a place not Material, it shall not be void; and so in the Principal Case, the Addition being in a Point not Material *per* a Stranger. Judgment *pro Querente*, *Benedict Winchcombe's Case*.

If the Deed be razed in the Date, after the Delivery, it goes to the whole, 5 *Rep.* 23. *Mathewson's Case*.

If two are bound in a Bond, and the Seal of one is broken off, this Misfeazance, *ex post facto*, shall avoid the Deed against both, 11 *Rep.* 27. *Henry Piggot's Case*.

The Defendant pleaded *Non est factum Testatoris*: A Special Verdict was, the Testator was bound in that Bond with two others joyntly and severally, and that afterwards the Seals of the two others were eaten with Mice and Rats: The whole Deed is avoided by this, for it is not the same Deed; and whereas it was joynt at the first, now if the Deed should stand good against the Defendant only, it should be his Bond only. It is not an Obligation joynt and several, but joynt or several at the Election of the Obligee, for he cannot use both, and when by his own Laches he hath deprived himself of his Election, the whole Bond is gone: But.

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But in *Matbewsons Case*, 5 Rep. the 100 l. are several and not joynt, and therefore if the Seal of one is torn off, it shall not avoid the Deed as to the others; and there if the Covenantee Release to one of the Covenantors, it shall not discharge the others, *March Rep.* 125. *Bayly and Garford*.

The Defendant pleads, that it was Sealed by him and one *W. C.* and that after the Sealing the Seal of *W. C.* was worn off, and after reaffixed, *per quod scriptum prædictum vacuum in lege existit*: Per Cur. its better to plead this Special matter, than *non est factum*: *Noy p.* 112. *Gomersal and Wood*.

The Defendant pleads, that at the time of the delivery there was not any day written in the Deed, but a space left, and after the delivery the Plaintiff put in a day, and *issint non est factum*: The Plea had been better to have set forth the Special matter, *per quod scriptum prædictum perdidit effectum*: Judgment *si actio* Moren. 8.

The Issue was *non est factum*; the Jury did find the Defendant did Seal and Deliver it, but that after the day of the Issue joyned, the Seal was pulled off from the Obligation. Judgment *pro Querente*, *Cro. Eliz.* p. 120. *Michels Case*.

The Defendant pleads *quod factum prædictum* was made and delivered without a date, and afterwards the Plaintiff put a date thereto, and *issint non est factum*; its an ill Plea. For he first confesseth it to be his Deed, by saying *factum prædictum*, and afterwards denies it; he might have said *non est factum* generally,

ally, *Cro. Eliz.* p. 800. *Cospey and Turner*.

If one confess an Obligation, and pleads acquittance; he shall not conclude *issint non est factum*; but Judgment *si actio*. 1 *H.* 7. 15.

The Plaintiff counts on Bill Obligatory, made by the Defendant to him, the Defendant pleads *non est factum*; the Jury find the Bill was a joynt Bill made by the Defendant, and another to the Plaintiff: *Per Cur.* its an ill plea, but he might have pleaded in Abatement of the Writ, 5 *Rep.* 119. *Whelpdales Case*.

The Defendant pleads the Obligation was made to another and not to the Plaintiff; its ill, for it amounts to *non est factum*, *Siderfin* p. 450. *Gifford and Perkins.* 2 *Keb.* 633. *Mesme Case*.

The Defendant pleads *non est factum*; Jury in Special Verdict find the Bill in *hec verba*. Whereby it appears, that the Defendant and *J. S.* Sealed the Bond and were joyntly obliged, and the said *J. S.* yet alive; *Per Cur.* adjudged *pro Querente*, *Cro. Jac.* p. 152. *Stead and Moone*.

Three are bound *conjunctim* and *divisim*; in an Action against two of them, they may plead *non est factum*, 14 *Eliz.* *Dyer* 310.

A Stranger to a Deed shall not plead a Special *non est factum*, as that the Seal is severed from the Deed and *issint*, &c. but he ought to plead *riens passa per la fait*. 1 *Rolls Rep.* 188. *More and Waldron*. If the Deed of another be pleaded against a Stranger, he may not plead *non est factum*, 20 *Ed. 4.* l. a.

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If an Obligation be delivered to another to the use of the Obligee, and this is tendered to him, and he refuseth it; now the delivery hath lost its force, and the Obligee may never after agree to this, and therefore the Obligor may say *non est factum*. So if the Obligation be made to a Feme Covert, and the Baron disagree to it, the Obligor may plead *non est factum*; for by the refusal the Bond hath lost its force, and becomes no Deed, 5 Rep. 119. *Whelpdales Case*, 1 Anderson 4 *Tawes Case*.

The Defendant pleads that he was Illiterate, and that the Bond was fasly read to him; and further, that this was delivered as an *Escrow*, and the Condition not performed, and *issint non est factum*, this *per Cur.* is not double, because he concludes *non est factum*, 38 H. 6. 26, 27.

Pleading *non est factum* upon delivery as an *Escrow*, and Conditions not performed, *vid. supra. Title Delivery*.

If a Man be Illiterated, and the Deed is not read to him, or read in other words, or the effect declared in other form then is contained in the Writing; he shall avoid this, and plead *non est factum*, 2 Rep. 9. *Thoroughgoods Case*.

If a Man be Lettered and is Blind, and the Deed is read to him in other manner, he shall avoid the Deed.

C. is bound to pay Mony to two joyntly, one dies, the other Survives and dies, and makes Executors. Executors brings Action
versus

versus C. and declares on the Bond made to the Testator and another, and Avers not the the Testator Survived. The Defendant pleads *non est factum* : Ill Plea, for it was his Deed, and the matter of variance goes to the Abatement of the Writ, and not to the Action; and its too late for the Defendant to take advantage of it, *Stiles* p. 78. *Holdich* and *Chace*.

If the Defendant had demanded Oyer of the Deed and entred it, he might have demurred as to the Declaration, *Allen* p. 41. *Mesme Case*.

Debt on Bond, the Defendant pleads *non est factum*; The Jury find Specially, the Plaintiff declares on an Obligation dated the 24 day of the Month, and they find the Obligation was sealed and delivered the 27 day, but bears date the 24 day; & *utrum* this shall be accounted the same Obligation on which the Plaintiff declares: It shall be accounted the same, and this is a Plea in Bar, and not in Abatement, *Stiles* p. 414. *Hill*. 1654. *Leake* and *Reynolds*. So

Goddard port Debt on Obligation made to his Intestate dated the 4 of Apr. 24 *Eliz.* The Defendant pleads, the Intestate died before the date of the Obligation, and so not his Deed; the Jury found, the Defendant declared this as his Deed the 30 *July*, 23 *Eliz.* But that this was dated as before, and that the Intestate was living the 30 *July*, but not the 4 of *Ap.* *Per Cur.* it is his Deed; for tho' the Obligee in pleading may not alledge the delivery before the date, for that
he

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he is estopt to take Averment against a thing exprest in the Deed, yet the Jury are not so estopt; Mistake of the date of an Obligation shall not hurt upon *non est factum* pleaded, 2 Rep. 4. Goddards Case.

Debt on Bond, which was set forth to be made the 15 of Nov. 25 Eliz. The Defendant pleads *non est factum*; the Jury find Specially, that it was dated the 15 of Nov. 23 Eliz. but it was not sealed and delivered till the 18 of Nov. 26 Eliz. Et si, &c. Per Cur. this Verdict is found for the Plaintiff, the Issue being Generally *non est factum*, it appears to be his Deed; but peradventure by Special Pleading, he might have helpt himself, Cro. Jac. 136. Lady Lane versus Pledal.

Special Verdict find, the Plaintiff hath declared on an Obligation made to himself only, without speaking of any other joynr Obligee, and that the Plaintiff as Survivor hath brought the Action; on *non est factum* pleaded, if it shall be said, the Deed of the Defendant in manner as the Plaintiff hath declared: Per Cur. the Plaintiff ought to have declared of the Special matter; *non est factum* in this case is no good Plea; for he hath not pleaded it *respective* as to the Obligation, but Generally *non est factum suum*; which refers to the Obligor only; and the Issue is not whether he made the Deed to the Plaintiff or not, but Generally whether he made it at all; this Plea *non est factum* hath not any respect to the Obligee; for if the Obligee

Obligee be a Monk, and be another person who bears the Name of the Obligee, yet in such cases, the Obligee cannot safely plead *non est factum*: *Aliter* where one is Sued who bears the Name of the Obligor, 1 Leon. p. 322. Case 453. *Dennis* and St. *John*.

W. S. was bound to *H.* by the Name of *J. S.* and on that Obligation the Action was brought against him by the Name of *W. S.* and he pleaded *non est factum*, and the Special matter was found, and it was Ruled, that upon the Verdict the Plaintiff should not recover; but the best way for the Plaintiff was, to Sue the Defendant by the Name by which he is bound, and then if he appear and plead *ut supra*, he shall be concluded by the Obligation, 10 Eliz. *Dyer* 279.

Bond on Covenants, some are void, and some are not; how he shall conclude his Plea, 14 H. 8. 27, 28.

Sir *Edward A.* was bound in an Obligation by the Name of Sir *Edmond*, and subscribed that with the Name of *Edward*: In Debt brought against him he pleads *non est factum*, *Per Cur.* he might well plead that, for it appears that he is not named *Edmund*; and the Original against him was Command *Edward alias Edmond*, and that's not good, for a Man cannot have two Christian-names; but if he hath another Name at Confirmation, he must be sued by that, 2 Brownl. p. 48. *Sir Edward Ashfelds Case*.

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The Defendant pleads it was delivered as an Escrow, and *issint non est factum, & hoc paratus est verificare*: The Plaintiff demurs; per Cur. this is a Plea that may conclude either way, and is most usual with this conclusion; tho' generally upon a general Negative Plea, must be to the Country, as *non assumpsit infra sex annos*. Judgment for the Defendant, 3 Keb. 142. Manning and Bucknall.

The Defendant saith, *tempore confessionis scripti*, there was J. P. the Father, and J. P. the Son, the Plaintiff in full life, and that he sealed and delivered to J. P. the Father, and not to J. P. the Son; Judgment *fractio*; its a good Plea, and he need not say *non est factum* against the Son, 16 H. 7. 7. *vid. supra*; Siderfin 450. Giffords Case, *contra*.

A Man was bound to Randolph, and in Action brought, he declares he was bound Randolph: The Defendant pleads *non est factum*, and adjudged it was not his Deed, for that Randolph and Randolph are two Names distinct, per Co. in 1 Rol's Rep. 271. cited in Lumlies Case.

Debt brought upon two Obligations, the Defendant pleads *non sunt facta*, or *per minus*, its good by one Plea, Noy. 132. Dentons Case.

If the Defendant pleads *non est factum*, and further demurs upon the Obligation, the Demurrer is void, per Prisot. 35 H. 6. 9. b.

G g

After

After *non est factum* pleaded, the party shall give the Special matter in Evidence; 11 Rep. 26. *Piggots Case*, 2 *Mary Dyer* 112.

Debt *versus* G. B. Executor of S. B. on a Bond made by S. B. the Defendant *vim & injur*, &c. & *dicit quod scriptum prædictum non est factum suum*. There is no mention made of S. B. in all the Bar, and therefore *suum* cannot refer to him, but being after a Verdict, and found to be his Deed. *Pro Querente*, *Latch*. p. 123. *Bakers Case*.

Where a Deed is Enrolled, the party may not plead *non est factum*, but he may say *Riens passa per le fait*, 9 H. 6. 60.

Upon *non est factum* pleaded, and found against him that it was his Deed; the Judgment was entred, *quod sit in misericordia*, where it ought to have been *quod capiatur*: *Per Cur.* this is a manifest Error. If the Executor plead *non est factum*, *misericordia* shall be entred, 2 *Bulst.* 230. *Jones and Cross*, 1 *Keb.* 196. *Ellisons Case*.

The Defendant pleads *non est factum*, and at the *Nisi prius relictâ verificatione cognovi actionem*. Judgment that the Plaintiff shall recover, and the Defendant in *misericordia* and not *quod capiatur*, *Noy*. p. 4. *Barvage and Clarke*.

Estoppels

Estoppels in Pleading.

Vid. Supra tit' Estoppells.

Condition, if Obligor pay all such sums which he was obliged to pay by his several Writings Obligatory: The Defendant saith, there was not any Writings Obligatory, by which he was to pay any sum. No Plea, he is estopt to say so against the Condition, *More n. 75.*

Condition to pay all Legacies which J. S. had Bequeathed by his Will; the Defendant shall be estopt to say J. S. made no Will; but he may plead, he gave not any Legacies by his Will, *More n. 555. Paramor and Daring.*

Plea per duress. vid. title duress supra.

Pleas by the Heir to the Bond of his Ancestor

Vid. supra titulo. Actions of Debt against the Heir.

Outlawry Pleaded.

The Defendant pleads Outlawry to the Plaintiff, and concludes in Abatement. The Plaintiff pleads *null tiel* Record; the Defendant had a day to bring in the Record and failed; and because it was in Debt on Obligation, in which Outlawry goes in Bar, he failing of the Record, the Plaintiff had Judgment, *Cro. Eliz. 203. Smith and Bernard.*

The Defendant pleads Outlawry in the Plaintiff, and shews it in certain; the Plaintiff pleads *nul tiel* Record; in the meantime the Plaintiff reverseth the Outlawry: The Defendant shall not be condemned, but a *Respondens* *custet*. Failer of the Record not peremptory, the Defendants Plea being true at that time, *Yelv. p. 36. Green and Gascoigne, 1 Browel Rep. p. 83.*

The Defendant pleads Outlawry of the Plaintiff, and shewed the Outlawry in certain, by the name of *J. S. of D.* in the County of, &c. The Plaintiff shewed, that at the time of the Suit begun against him, the said *J. S.* upon which the Outlawry was pronounced, was dwelling at *S. absq' hoc* that he was dwelling at *D.* Per *Anderson*, its a good Replication to avoid the Outlawry without a Writ of Error; for he cannot be intended the same Person, *1 Leon. p. 87. Anonimus.*

In Debt on Bond: The Defendant Imparles till next Term; after he may plead that the Plaintiff is Outlawed, for the King shall have the Debt on Bond; *aliter* in Trespass or Debt on simple Contract, *16 Ed. 4 4.a. per Brian.*

The Defendant pleads Attainder of himself, after a Debt due to the Plaintiff; its no Plea, *More n. 982. Hall and Trussel, Bro. Eliz. 516. Banister and Trussel. 2 Anderson, 38, 45. Mesme Case.*

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The Defendant pleads, at the time of the Obligation made he was *non sana memoria*; its non Plea, *Cro. Eliz.* p. 398. *Stroud and Marshal.*

The Defendant pleaded, that the Plaintiff is a recusant Convict, in Bar, *Litt. Rep.* 235. *Rooksby versus Bridge.*

Debt upon Obligation in *Norwich*: The Defendant confest it to be his Deed, but according to the Custom there prayed *quod inquiratur de debito*; and the Inquest was awarded and returned, and found to a certain sum, for which sum the Plaintiff had Judgment to Recover; this was assigned for Error: But because it was done according to the Custom it was not Reversible, *Cro. Eliz.* 894. *Grice's Case.*

In Debt on Obligation against the Lord *Monteagle*: The Defendant pleads his Peerage, and prays to be Discharged: *Per Cur.* Plead in chief, this is but a Dilatory Plea, *Stiles* p. 257. *Lord Monteagles Case.*

Arbitrament pleaded in Bar.

Vid. Supra titulo, Rules of Pleading.

Foreign Plea.

THE Condition was, that in case the Ship were Cast-away in the Voyage, and did not return, it should be void. The Action was laid in *London*, and the Defendant pleaded she was Cast-away at *Falmouth*: Its ill; had the Plea been local it ought to be sworn: The Action being Transitory,

the Defendant shall not by any thing Transitory alter the *Venue*; but ought to alledge the Ship was Cast-away at *St. Maria de Arcubus* in *Warda de Cheap*, in the same County the Action is brought, 1 *Keb.* 750. *Collins's Case*.

The Declaration is, that the Obligation was at *Barnstable*, and the Plea is, that it was at *Chichly*, and payment alledged there, which is a Foreign Plea. The Plea was not sworn, nor demurred to, but received, and Day given to swear it; and for not swearing it accordingly, Judgment is given by default, whereas it ought to have been by *Nihil dicit* for want of a Plea. And *per Rolls*, If one plead an Insufficient Plea, although it be a Foreign Plea, its not necessary it should be sworn. *Stiles* p. 209. *Wyatt and Harbye*.

In a Corporation Court, if the Defendant plead a Foreign Plea, which is Collateral, (as in Debt on Bond) he pleads a Release made in a place out of the Jurisdiction, it need not be received without Oath. But if in Covenant or Debt, for Mony to be paid in another place, he pleads payment accordingly, or the Covenants performed in a place limited, which is out of the Jurisdiction, it ought to be received without Oath, *Lit.* p. 236. *Corporation Court*.

Condition for performance of Covenants: Breach assigned for Non-payment of Rent. The Defendant pleads performance till such a day, and that the Plaintiff entred in *Surry*, where the Lands are leased. But the Action being

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being in *B. R.* the Court made him swear his plea; yet because the Council offered to try it by *Nil debet*, which is no Plea, but by Consent, which the Plaintiff refused, the Court allowed the Plea, 2 *Keb.* p. 386. *Jones and Comport.*

Debt on Bond in *Bristol*; Recovery pleaded in the Kings Bench, the Plea must be sworn; and though it be sworn, if they have cause to presume it not true; they may refuse it, *Siderfin* in *Knights and Pitt's Case*, fo. 330.

Foreign Attachment pleaded;

THE Defendant pleads Foreign Attachment in *London* to Debt on Bond: The Plaintiff demurs;

1. Because the Defendant had Attached Money in his own hands by way of Retainer.
2. The Custom is in *London*, that the Recoveror ought to find Sureties, that if the Defendant be discharged within a year and a day, then to pay the Money, and it did not appear by the Record that he found Sureties. This was held an incurable Fault, 1 *Brownl. Rep.* p. 60. *Hope and Holman.*

L. brought Debt against *H.* on Obligation: *H.* pleads how one *J. J.* affirmed a plaint of Debt in *London* against the said *L.* and by the Custom there Attached that Debt now demanded in the Hands of the said *H.* and pleaded the Recovery and Judgment there. The Plaintiff replies; that be-

fore Attachment *J. J.* brought Debt in the King's Bench against the said *L.* for the same Debt; whereupon he made an Attachment whilst the Suit was depending. *Et hoc, &c.* *H.* demurs: *Per Cur.* notwithstanding this that *J. J.* had commenc'd a Suit in *B. R.* for his Debt, and the Suit there depending, yet the Debt in the Hands of *H.* may be Attached: For tho one cannot Attach a Debt in *London*, for that a Suit is here depending in the King-Bench, as *Cro. Eliz.* 691. *Humfrey* and *Barnes*; yet one who hath conceived an Action here, may affirm a plaint in *London* for the same Debt, and may make Attachment of the parties Debt, according to the Custom: For there the Debt in question is not touched by the Attachment; and the Plaintiff might now have pleaded this Attachment in Bar for so much of his Debt in the Action brought in the King's-Bench, *Cro. Eliz.* 593, 712. *Leuknor* and *Huntly*.

The Defendant pleads, that the Plaintiff was Indebted to him, & *concessit solvere*, and pleads a Foreign Attachment in *London*. The Plaintiff *protestando quod non habetur tale Record*, *pro placito dicit*, that he, *pro diversis denariorum summis per ipsum præfat. R. prius debuit*, non concessit solvere the said Sum, *modo & forma prout*: Adjudg'd a good Plea in Bar, for the Debt is well Traversable, *Cro. Eliz.* 830. *Coke* and *Brainforth*.

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The Defendant pleads Tender, and so to Issue; and after the Defendant pleads, that after the Darrein Continuance, Foreign Attachment: *Per Cur'*, its ill; and *per Curiam*, the Action for the Debt depending in this Court cannot be Attached, 3 *Leon.* 210. After Impar lance, Foreign Attachment not to be pleaded, 3 *Leon.* 322. *Babington's Case.*

The Defendant pleads to Debt on Bond of 80 l. that the Plaintiff pendant the Bill brought against him a Plaint in *London*, and there by Custom had attached 40 l. of a Debt due to the Defendant in the hands of J.S. in satisfaction of 40 l. due on this Bond, and demanded Judgment of the Bill. *Per Cur.* its a Plea in Bar, and not in Abatement, for the Plaintiff for this part is to be barred for ever; and this receipt of parcel is lawful, and a Recovery in Law. *Aliter* of a bare Acceptance, *Cra. Eliz.* p. 342. *May and Middleton.*

The Debt follows the person, and its therefore called a Foreign Attachment, because let the Debt rise where it will, its attachable, if the Debtor cometh, or the Money be brought into *London*, 2 *Keb.* 320. *Mollam and Hern.*

W. was bound to *K.* in a Recognizance of 400 l. and *K.* was bound to *W.* in a Bond of 100 l. *W.* (according to the Custom of *London*) affirmed a Plaint of Debt in the *Guild-Hall* against *K.* upon the said Bond of 100 l. and attached the Debt due by himself

to *W.* in his own hands; and now *R.* sued Execution against *W.* upon the Recognizance, and *W.* brought *Andita Querela*, and it was allowed, 1 *Leon.* 297. *Wallpool* and *King.*

An Obligation for an 100 l. on Condition to pay 50 l. before the 25th of *March.* The Defendant pleads a Foreign Attachment of the 50 l. the 17th of *February* in the hands of *Watts*, and a Return that it was attach'd; but there was no *Scire facias* till *April* after. (Before the day of payment, a Creditor of the Plaintiffs, *scilicet, &c.* attaches the 50 l. and gives Security in the Court, according to the Custom, to pay the Debt if it be disproved within the year and day.) The Plaintiff demurs, as being no sufficient Attachment being before the Mony was due. The custom of *London* is to attach a Debt before its due, (contrary to 3 *Cro.* 184) yet it may not be levied till after the time of payment of the Obligation; there is only a seizure, and a *Cesset Executio* till the Mony be due. Also the party against whom the Execution is sued, is not to give Security, but to pay the Mony; but the party that sueth the Execution is to give it, to return the Mony, if the Debt be disproved within a year and a day; Also the Judgment had there is pleadable: Also *per Cur.* its a good Bar for the whole; but if it were for part, as 20 l. this Record of the Attachment shall be pleaded in Bar for part, *i. e. pro tanto,* *Siderfin* p. 327. 2 *Keb.* p. 202. *Robins* and *Standard.* Vide *Co. Intr.* 142. *Ra. Entr.* 158; Pleading

Pleading to the Jurisdiction.

IN Debt on an Obligation in the Palace-Court, averring neither of the parties were of the King's Household. After Judgment on *Non est factum*, the Defendant assigns for Error, that the Plaintiff was the King's Brazier: To which the Plaintiff demurred; because the Defendant by the Record is estopped to say that, but should have taken Issue on the Averment: Which the Court agreed; as on alledging a Cause *infra*, that was out of the Jurisdiction; this must be pleaded, and cannot be assigned for Error, 3 Keb. 372. *Newman and River.*

Condition to deliver a certain quantity of Tin at a certain place within the Jurisdiction of the Stannary: And the Defendant pleaded to the Jurisdiction of the Court, that it was a Tin Cause: The Charters are to the Cause, and shall not be restrained to persons, though the Defendant be not alledged in the Plea, to be a Tinner: It was allowed, 1 Rol. Rep. *Pinson and Smale.*

Obliga-

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Recovery pleaded in Bar.

THree are bound *pro toto & in solido*: the Obligee had Judgment to recover against one of them, and afterwards sues an Action against the others; this Recovery is not a Bar, because no satisfaction of the Duty; but Execution is a good Plea, 4 H. 7. 8.b. Co. Rep. 6. 46.a. Higgin's Case.

As long as Judgment remains in force, a man shall not have an Action on the same Bond; for the Debt is changed into a higher nature of Record, Cro. El. p. 817. Preston's Case.

An Action of Debt brought by the Executor, on Bond made to the Testator: The Defendant pleads, that the Testator *in vita sua in Curia de Banco hic recuperavit debitum prædictum cum 40 s. pro missis* (without alledging the Execution) *quod quidem Recordum recuperationis*, was removed *per breve d'Error*, & *ibid. remanet minimè reversat*. The Plea was good, 6 Rep. 44. Higgin's Case. Aliter if Recovery be by Debt *sur* Bond in the Courts *per* Justices, *Ibid.* And though the Recovery be erroneous; yet so long as it remains in force, it ought to be executed, and when it is Reversed, the Obligee is restored unto his new Action upon the said Obligation. *Ibid.*

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If a man bring Debt upon Bond, and he is barred by Judgment, so long as the Judgment stands in force he cannot have a new Action. So when he hath Judgment in an Action upon the same Bond, so long as the Judgment remains in force, he shall not have a new Action. *Ibid.*

The Defendant pleads, the Plaintiff brought another Action upon the same Bond in London; to which the Defendant there pleads *Non est factum*, and so found there: And upon this Verdict the Entry was, That the Defendant should recover Damages against the Plaintiff, and the Defendant be without Day; but no Judgment that the Plaintiff *Nil capiat per Billam*: And so per Cur, no Judgment to bar the Plaintiff, 1 Brownl. p. 81. *Lewes and Hall. Vid. 7 Cro. Jac. p. 284.*

Debt sur Bond of 600 l. *vers. K. in Bristol*
The Defendant pleads a Recovery in B. R. upon the same Bond, against the same Defendant per the Plaintiff. *Et hoc paratus est verificare.* The Plaintiff Replies, *Nul tuel Record, unde petit Judicium & debitum suum predict' sibi adjudicari.* The Defendant Rejoyns, *Quod habetur tale Record prout per Record in B. R. apparet.* Per Cur' he that will joyn Issue sur Record, ought to say, *Et hoc paratus est verificare, prout per Recordum illud — vel verificare prout Curia hic consideravit —* and so are all the Presidents; yet in Error Judgment was affirmed for the Defendant in the Writ of Error, and that the first

first Judgment should be affirmed; notwithstanding it was *prout per Record illius plenius liquet. Siderfin p. 329. Knight and Pitt. Vide 2 Keb. 230, 278.*

Two were joyntly and severally bound: In Debt brought the Defendant pleads, the Plaintiff recovered against the other the same Debt, and had Execution. Its a good Plea, notwithstanding it was not shewed by what Process he had Execution, because the Execution is on Record; and shall be tried by the Record; but if he paid the Monies *in Pais* to the Plaintiff, and not in Court, it is not an Execution of the Judgment, *Mo. N. 91.*

The Defendant pleads, That the Plaintiff in the King's Court at *Penwarrth*, brought Debt upon this Obligation against *T.* who was bound with him in the said Bond joyntly and severally, and recovered; and had him in Execution; and that the Gaoler voluntarily suffered him to go at large. It was Demurred, 1. Because he doth not shew, the Court had power to hold Plea. 2. The Plea is not good in substance, for this Escape is no discharge of the Debt; and therefore the Action lies against the other; *3 Rep. 86. Blumfield's Case. Cro. Jac. 531. Pendavon's Case.*

Two bound joyntly and severally; the Obligee brought Action against one, and *retraxit* his Suit. *Q.* If this be a Bar to sue the other Obligor: But the *Retraxis* being pleaded in the Court of Record in *Poole*,
and

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and it not being alledged, that this Court had power to hold Plea *per Patent*, or Prescription, It is an ill Plea, *Jones* p. 451. *Dennis* and *Paine*.

If a man be bound by an Obligation, and afterwards promiseth to pay the Mony; *Assumpsit* lies upon this Promise, and if he recover all in Damages, this shall be a Bar in Debt *sur le Bond*, *Co. Lit.* p. 240. *Ashbroke* and *Shape*.

Venue, Bond where Triable.

When the Obligation is made beyond Sea.

AN Obligation made beyond Sea, may be sued here in *England* in what place the Plaintiff will; as if it bears date at *Bordeaux* in *France*, it may be alledged to be made in *quodam loco vocat'* *Bordeaux* in *France*, in *Islington* in the County of *Middlesex*, and there it shall be tried; for whether there be such a place as *Islington*, or not, is not *Traversable*, *Co. Lit.* p. 261 *b*.

One sues in the Admirals Court, upon a Bond made in *partibus Maritimis Virginiae*; and so he may, if he will, suppose the Contract in *Virginia*; and if he will suppose the Contract in *England*, he may sue here: But if part of the Contract be here, and part beyond Sea in *Virginia*, or upon the Sea, the Common Law shall have Jurisdiction, 2 *Roll. Rep.* 492. *Capp's Case*.

Where

Where part is to be done : within the Realm, and part out of the Realm, the Plea ought to be Triable within the Realm.

Condition was for 40 l. to be paid within 14 days next after the Return of one *Ruffel* into *England*, from the City of *Venice*. The Defendant pleads in Bar, that the said R. was not at *Venice*. The Plaintiff demurs; and it was Adjudged a naughty Plea, 1 *Brownl.* p. 49. *Hales* and *Bell*.

Where the Condition contains Matter not Triable, the Condition is void, *Mo. N. 201*.

The Issue was, the Obligor was never at *Rome*; but if the Matter is parcel Triable, its good enough. *Molineux*.

A Declaration upon a Bill dated in *paroch' Sanctæ Mariz de Arcubus in Lond'*; and upon Oyer it bore date at *Hamborough*: Its triable here, *Latch* p. 4, 77, 84. *Ward* and *Kidson*, *Cro. Jac. fo. 76*. *Higbam* and *Flower*.

An Obligation sued in the Admiralty, supposed to be made and delivered in Chancery. *Per Cur'* such a Bond may be sued here; but being begun there, we cannot prohibit them: For the Plaintiffs Witnesses may be beyond Sea, 3 *Leon.* p. 232. *Delabreche's Case*.

Debt on Obligation dated in *Surry*, brought in *London*. The Counsel pleaded *Stat. 6 R. 2. cap. 2.* that all Obligations ought to be sued in their proper Counties, as dated, and prayed Judgment of the Writ. *Per Cur'* its a frivolous Plea; the Law being clear, that unless the Obligation appear in the Count,

or

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or on the Pleading, to be out of the County, although it bear date out, its not material where its brought, 1 *Keb.* 593. *Pretty*, and *Roberts*.

Debt on a Bond of 60 l. for the payment of 30 l. 10 s. at *Coventry*; Issue was taken that the Mony was paid at *Coventry*; yet by consent of Parties and Paper on the Rule of Court, Issue was found *pro Querente* at *London*, and Judgment, but it was reversed for this Error. Consent of parties cannot change the Law, *Hobart* p. 5. *Crow* and *Edwards*.

Recognizance taken before a Judge at *Serjeants Inn* in *Fleetstreet*, *London*, out of Term; the Action was laid in *London*, and not in *Middlesex*, and good; and the *Scire facias* shall be directed to the Sheriff of *London*; but if it were taken in Court or generally, it shall be in *Middlesex*, *Hob.* p. 195, 196. *Hall* and *Winchfield*.

Place of Payment in the Condition.

DEbt in *Harvering* in *Essex*: The Condition was for payment of 20 l. to the Plaintiff at his House at *S.* in *Kent*. The Defendant pleads payment at the day, &c. *Secundum formam & effectum indorsamenti prædicti*; and Error was assigned, for that the Issue was tryed at *Harvering*, and not at *S.* in *Kent*. *Non allocatur*: For when a thing Issuable is alledged, and no place, this shall be tryed where the Action is brought; and *Secundum formam, &c.* refers only to the Time, and not

H h to

to the Place: For the Place is not material, payment being made to the Obligee; and it appears not but S. in *Kent* may be in the Jurisdiction of *Haevering*; *Cro. Eliz.* p. 105. *Newe's Case*.

Condition was, if he pay 50 l. at his House at *Lockington*, in the Parish of *Kilmerston*, that then, &c. The Defendant pleads payment, &c. and the *Venue* issues of the *Venue* of *Lockington*; and good; for it shall be intended a Village in the Parish of *Kilmerston*, for divers Villages may be in one Parish; But if it had been at his House in *Lockington* in *Kilmerston*, then it shall not be intended a Village, but a place known, *Cro. Eliz.* p. 117. *Pike and Cottingham*. 3 *Leon.* 193. *Cro. Eliz.* 804. *Kerchever and Wood*.

Payment pleaded *apud domum mansionalem Rectoriae de M.* *Venue* was *de M.* and good, and *M.* shall be intended a Vill.

Condition for the payment of 100 l. at his House in *Cheapside*, the 21 of *June* next ensuing the date hereof. The Defendant pleads, that on the 21st of *January* then next following the date of the Condition of the Obligation aforesaid, he paid the 100 l. at the Plaintiffs House in *Cheapside*, *Secundum formam*, &c. Its good enough, though the Condition hath no date, for the Condition and Obligation are as but one Deed: But because its not alledged in what Parish or House the Ward is, its ill, because of a *Venue* and Trial, a Parish and Ward in *London*, are as a Vill and Hamlet in other Countries,

Cro.

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Cro. Eliz. pag. 372. Fortb and Harrison.

Condition was, that the Defendant should pay ſſo much Mony in an Houſe of the Plaintiffs at *Lincoln*. The Defendant pleads payment at *Lincoln* aforeſaid, and Iſſue, &c. The *Venire* was *De vicineto Civitatis Lincoln'*, the Trial is good; and its a Rule, where it doth not appear upon the Record that there is a more proper place of Trial, than where the Trial was, that there the Trial is good; but here is not a more proper place; and it could not be tryed in the Body of the County, becauſe the payment was to be in the City, *March. Rep. 124. Thorndike and Turpington.*

Debt upon an Obligation in *London*, againſt *J. S. of Wakefield* in *Com' prædicta*, Conditioned for the payment of 100 l. at *Wakefield*. The Defendant pleads payment at *Wakefield* aforeſaid in *Com' Ebor'*. The Plaintiff ſaith, *Non ſolvit*, and ſo at Iſſue. The Trial was, *De vicineto de Wakefield in Com' Eborum*. It was Error, becauſe he is named of *Wakefield* in *Com' præd'*, which ſhall be intended *London*; and the payment at *Wakefield* aforeſaid ſhall be ſo intended; and the words added [*in Com' Ebor'*] are idle, *Cro. Eliz. 867, Sackvill and Roades.*

Venue.

THe Margent of the Count is *Notr'*, and the Count it self contains, that the Obligation was made at the Town of *Notr'*, (which is a County it self) on *Non est factum*, *Venus* was of the Town of *Notr'*, and tryed by a Jury of the County: *Per Cur'* in arrest of Judgment, though the Town of *N.* be a County of it self; yet it may be some part of the Town may be within the County; and for that possibillity they would not arrest Judgment, 2 *Brownl.* p. 165. *Browning and Shelly.*

The Plaintiff declared on a Bond made in *London*: The Defendant pleads an Usurious Contract in *Staffordshire*, and the Bond made for the same Contract. The Plaintiff replied, the Bond was made *bond fide & non prousura*. The Issue was tryed in the County of *Staff.* And *per Cur'* it was well tryed, 1 *Leon.* pag. 148. Case 206. *Kinnerley and Smart.*

The Plaintiff Leased to the Defendant certain Lands in *Cambridgeshire*, rendring Rent, and the Defendant became bound in a Bond for the payment of the Rent. Debt on the Bond is brought in the County of *Northampton*, to which the Defendant pleads payment of the Rent, without shewing the place of payment. It was tryed *per Nisi prius* at *Northampton*, and well, 2 *Leon.* 146. *Coney and Beveridge's Case.*

Debt

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Debt brought in *London*, which on Oyer was to perform Covenants, which were to enjoy a Walk in a Forest. On pleading, the Venue was of the Walk; though the Venue be ill, yet its aided after Verdict, *per Stat. 16 & 17 Car. 2. cap. 8. 2 Keb. 212, 216. Sterk and Bates.*

Condition was, that if he appeared such a day, it may be tryed *per Pais, Cro. Eliz. 131. Hos and Marshall.*

Debt on a Bond: In the Imparlance-Roll, the Bond was alledged to be made at *Newcastle*, and in the Issue-Roll it was alledged to be made at *York*, and tryed; Error was brought. The Court would not grant that the Imparlance-Roll might be amended, *1 Brownl. Rep. 66. Fetberston and Tapsale.*

A Bill Obligatory to be paid within ten days, after *J. L.* went by five days undivided from *London* to *York*, and returned from *York* to *London*. The Defendant pleads, that *J. L.* did not go five days immediately from *London* to *York*, and return from *York* to *London*. Issue and Venue was awarded from the Parish of *Bow* in *Warda de Cheape*, where the Bill was alledged to be made, and found *pro Quer.* Judgment was arrested, because it is not alledged to what Parish in *London* he Returned, but to *London* generally, that so a Venue might have been. 2. As this case is, the Venue must be from *London*; so *de corpore Comitatus*, and not of the Parish where the Bill was made, *Cro. Jac. 137, 150. Normanvile and Pope.*

Debt on Bond, Conditioned to pay 20l. and saith not where. The Defendant pleads *Solvit ad diem*, and Verdict and Judgment: The Court denied to affirm the Judgment, because here is no *Venue*, and so no Trial. This was in *Durham*, on Error brought, 2 *Keb.* 620. *Norcliffe* and *Anderson*.

Condition to pay a Moiety of Charges, &c. The Defendant pleads Payment, and saith not where. The Plaintiff demurs, because no *Venue* can be. *Per Hales*, no place is here necessary, the Pleading being in the Affirmative, 2 *Keb.* 762. *Cantor* and *Hurnell*.

Condition to be paid at his Mansion-house, &c. this may be paid at any place, 3 *Bulfr.* 244.

In Debt on Bond: Trial in Issue shall not be stayed on *infra etatem*, but this must be pleaded; and the party cannot be aided on *Non est factum*; but a Feme Covert may, 3 *Keb.* p. 228. *Cole* and *Delawne*.

Debt on Bond in *Norwich*, and *Cognovit Actionem*; by custom a Writ of Enquiry was awarded *de vero debito*, and good, 3 *Keb.* 211. *Brightman* and *Parker*, 251. *Rogerson* and *Jacobson*.

A Man recovers Debt on Bond: If a man will bring Action of Debt for the Sum recovered, he must lay it in the County of *Middlesex*, and where the Judgment was given, which hath made *Novationem contractus*, *Hob.* p. 196. in *Hall* and *Winkfield's Case*.

Joyning Issue on payment.

Condition to pay *santas denariorum summas*, as he should receive by such a day: The Defendant pleads payment generally. The Plaintiff replies he did not pay 50 l. such a day, & *hoc paratus, &c.* and good, for the Defendant must rejoyne and conclude, *Et hoc petit, &c.* 2 Keb. 230. Tr. 19 Car 2. *Hansal and Nurse.*

Condition to pay a lesser sum the 24. of June, in such a year: The Defendant pleads he paid this *prædicto 24 die Junii*, *quod ei solvisse debuit secundum formam & effectum Conditionis*: The Plaintiff replies, *quod non solvit prædictam summam, &c. prædicto 14 die Augusti*, *quod ei solvisse debuisset; & hoc petit, &c.* The Jury find the Defendant *non solvit prædicto 14 die Junii*: And the Plaintiff had Judgment: Error assigned, because no Issue joyned: The Plaintiff ought to have replied, *quod non solvit prædicto 14 die Junii*, and not *14 die Augusti*. Per Cur. its good. Had the Plaintiff replied, *quod non solvit prædicto 14* and omitted *August*; this had been good; then the addition of *August* is idle and surplusage, 2 Rols Rep. 135. *Halse and Bonithan.*

Condition to pay 10 l. 10 s. The Defendant pleads payment of 10 l. *Secundum formam, &c.* upon which Issue and Verdict *pro Querente*, and yet Repleader Awarded, Hob. p. 113. *Kent and Hall.*

Condition that the Obligor shall find three men to go with him to T. and he surmifeth they went with the Obligee, if the Obligee faith they did not go with him, this is no Issue; for if one of them fail, the Obligation is forfeited, 4 H. 7. 8. *per Voverfor.*

Condition, If M. W. (the Plaintiff) doth not depart out of the Service of the Defendant without License of the Defendant, nor Marry her self but with his consent; then if the Defendant shall pay to the Plaintiff within 28 daies after demand by her made at his House 100 l. that then, &c. The Defendant pleads, that the Plaintiff on the 4 of May, 30 Eliz. departed out of his Service without License: The Plaintiff replies, that 6 of Sept. the same year, she departed out of his Service with License, and that the 4 of Octo. after she demanded the 100 l. and he refused; *absque hoc* that she departed out of his Service the 4 of May, 30 Eliz. *Sans License*, and the Writ bear date the 18 of Octob. next after the demand; so that the Defendant hath not 28 days after the demand, to pay the 100 l. *Per Cur.* the Issue is taken upon the departure out of the Service, and the Defendant in his Plea hath relied upon it, and the demand is not material, 2 Leon. p. 100. *Monings and Warley.*

Condi-

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Condition to pay a Robe and an Horse ; one cannot make several Issues, as he paid not a Robe, & *hoc petit*, &c. he paid not an Horse, & *hoc petit*, &c. *aliter* in Covenant, 2 *Keb.* 69. Young and Gosling.

Verdict.

DEbt on Obligation against C. *per minas* pleaded, and Verdict, and Judgment in the Court of B. The Jury in assessing off Damages say, *pro misis & custagiis*, but do not say, *circa sectam expensis*; and there is no Verdict to warrant the Judgment, and it was Error, *Stiles* 164. Crible and Orchard.

After *non est factum* by one pleaded, the Jury find the Bond sealed by two, it alters not the Bond, but they are as distinct Deeds, 2 *Keb.* 872. 881. Zouch and Clay.

Condition for the payment of 300 *l.* within six Months after the Death of the E. of *Huntingdon*: The Defendant pleads the 1 of May. 39 *Eliz.* the Earl died, and that within six Months after (*viz.*) the 1 of Dec. 41 *Eliz.* he paid the sum: Issue was he did not pay it *modo & forma*: The Jury found he did pay it the 1 of Dec. 41 *Eliz.* and so for the Plaintiff; this was Error; the payment alledged the 1 of Dec. 41 *Eliz.* is void, it ought to have been enquired, whether he had paid it within the six Months; and Judgment shall not be given on his implicit confession of Non-payment within the six Months,

Months, Cro. Eliz. 823. E. Huntington versus Hall.

The Verdict was *non solvit*, the said 40*l.* *super quartam dem Octobris*, where it ought to have been *supra quartam decimam*; Judgment on this Verdict, and Error brought; yet amended, Cro. Jac. 185. Harrison against Fulstowe.

Condition for the payment of 100*l.* by J. A. J. C. and J. V. or any of them, J. A. pleads, that he paid it at the day; the Plaintiff replies, that neither the said J. A. J. C. nor J. V. *nec eorum aliquis* had paid it at the day; the Jury find, that the said J. A. had not paid the said 100*l.* Judgment *pro Querente*; Error assigned, because the Verdict was not according to the Issue, for it might have been paid by any of the others: *Per Cur.* its a good Verdict, the addition of J. C. and J. V. not mentioned in the Bar was but Surplusage, and their finding J. A. did not pay the Mony, its sufficient; and if it had been proved that any of the other two had made the payment, the Jury should have been directed to find, that the Defendant had paid it by such, Cro. Jac. p. 6. *Arscott and Heale.*

Judgment

Judgment, Costs and Damages.

WHERE the Plaintiff had a Verdict for him, there Judgment is *quod recuperet debitum & dampna*, and Costs assessed by the Jury, and further *de increment' per Cur.* But if he had Judgment on *non sum informatus*, Demurrer, or *nihil dicit*, the Judgment is, *quod recuperet debitum & damna*, which include the Costs. In the Common-Bench it is, *quod recuperet debitum & damna occasione detentionis*, 2 Rols Rep. 470. Broad and Nurse. Judgment *quod recuperet debitum & 6s. 8 d. pro damnis occasione, &c.* and no mention *pro missis & custag.* & *quod inquir' damna* includes both, and so is the course of Entry, Cro. Jac. 420. *Ashmores Case.*

The Judgment was, *quod recuperet debitum suum*, and doth not say *prædict'*, its good enough; there is but one Debt, and the *ideo* in the Record implies it to be the same Debt, *Stiles 251. Port and Middleton.*

The Court may tax Damages without a Writ of enquiry in Debt on a Judgment upon Bond, *Siderfin p. 442. Roo and Apsley, H. 21. and 22. Car. 2.*

Action of Debt on several Obligations, having but one Count and several Issues, some found for the Plaintiff, and some for the Defendant, and several Damages, but int're Costs. It was prayed that Judgment may be reverst as to part: But a Judgment cannot be reverst in part, neither as

to

to persons or things, and *Hobart* p. 6. *Miles* and *Jacob* denied to be Law, 1 *Keb.* 232. *Anonymus*.

Debt *sur* Obligation of 16 *l.* Plaintiff declares *ad damnum* 10 *l.* On *non est factum*, found *pro Querente*: The Jury gave the Plaintiff Damages 9 *l.* besides the 16 *l.* and he declares but to his Damages of 10 *l.* and so it exceeded: But Judgment *pro Querente*, for the Court may increase Costs, *Noy* 61. *Wolf* and *Meggs*.

The Plaintiff Demurs on the Defendants Bar, and the Court awarded the Plea good; upon which Judgment the Plaintiff *per* Error, and therein the Bar awarded insufficient, and so the Judgment revert, and the Judgment was that the Plaintiff should recover his Debt and Damages, as if he had recovered in the first Action, and not to be restored to his Action only, *Tel.* p. 41. *Taylor* and *More*.

In Misericordia, or Capiatur.

Where the Party denies the Deed of his Ancestor, and it is found against him by Verdict, *Misericordia* shall be entred against him, and not a *Capiatur*. Where the Party denies his own Deed, and it is found against him by Verdict, a *Capiatur* shall be entred against him, 2 *Sanders* 191. *Mortlack* and *Charlton*.

Where

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Where the Defendant pleads *non est factum*, and after diverse Continuances *relictâ verificatione* confesseth the Action, *Qu.* if Judgment shall be given on the Plea, or on the Confession. 8 Rep. *Beechers Case* is, that a *Capiatur* shall be entred; but the better Opinion is, that the Defendant shall not be fined, but amerced, and a *Misericordia* shall be entred against him on his own Confession; and so is the course to enter in *Com. B.* and *B. R.* also 2 *Sanders* 191, 192. The reason is good in *Cro. Jac.* 64. *Davis* and *Clark*, and 2 *Rolls Rep.* *Gerard* and *Warren*. For tho' the Defendant by his false Plea hath delayed the Plaintiff of his Action; yet the *Capiatur* is not for the delay but for the falsity rather: And then when he comes in, and before Verdict confesseth the truth, he saves his Fine, for he hath put the Court to no trouble, 2 *Keb.* 694. *Powel* and *Roo*. The Court seemed in doubt, tho' the Secondary said it was in *mia* generally, *Cro. Jac.* 420. *Ashmore* and *Ripley*. Precedents are both ways, 2 *Keb.* 704. *Mortlock* and *Charlton*.

Judgment in Debt, where the demand is in the *debet & detinet*, is to recover Debt, Damages and Costs of Suit, and the Defendant in *mia*; but if the Defendant denies his Deed, then a *Capias pro Fine* issues out, 1 *Brownl.* p. 50.

The Earl of *L.* pleaded *non est factum*, and found against him: The Judgment was, *ideo Capiatur* and good, tho' he be a Peer of the Realm; for a Fine is due to the King, and
none

none shall have Priviledge against him, Cro. Eliz. 503. Earl of Lincoln against Flow-
er.

Condition, If Henry and Robert H. pay &c. The Defendant Robert pleads *solvit ad diem*, and found against him, and Judgment pro *Querente quod recuperet debitum & damna* against the said Robert, & *præd' Henricus in misericordia*, where it should have been Robert, for Henry was no party to the Record; this was *ore tenus* assigned for Error, and it being a misprision of the Clerk, it was amended, Cro. Car. 594. Pelham and Hemming.

The Defendant confest the Action, and it was entred, *non potest dedicere actionem quin non solvet*: Per Cur. he having confest the Action, the words *quin non solvet* are not material, but surplusage, and the Plaintiff had Judgment, Cro. Eliz. p. 144. Long and Woodliff.

The Defendant pleads *per minas*; the Plaintiff saith he did it *spontanea voluntate*, and Traverseth the *minas*, and at the Nisi prius the Defendant *cognovit actionem*, & *non potest dedicere*, but that he made it at large, which is to a Plea *per duress*: But per Cur. in regard it is entred, *quod cognovit actionem*, it is not necessary for him to acknowledge the point in Issue; and that which comes after the *cognovit actionem*, is but surplusage, Cro. Eliz. p. 840. Brown and Holland.

Debt against Baron and Feme on Obligation made to the Wife, *dum sola*: On *non est factum*, and found *pro Querente*, Judgment shall be *Capiantur* for both, Cro. Eliz. p. 381. *Perey's Case*.

The Plaintiff declares upon a Bill *quod reddat ei unum dolium ferri deliberand.* within such a time; and on, *non est factum pro Querente*: Judgment was *quod Querens recuperet dolium ferri vel valorem ad damna, &c.* and upon this a Writ Issues *ad distringend* the Defendant *quod reddat prredictum dolium ferri vel valorem ejusdem, & si non reddat dolium, tunc per Sacramentum inquiratur quantum idem dolium valeat*: And before any return of this Writ of enquiry, the Plaintiff takes out a *Capias* upon the Judgment: Its Error, 1. because the the Judgment is in the Disjunctive; it ought to be *quod recuperet dolium ferri, & si non, valorem inde*, as in *detinue*, for the Plaintiff is not to have Election which he will have. 2. The Judgment is not perfect before the Writ returned, and so nothing certain to ground a *Capias*, or other Execution on. *Telv.* p. 71. *Paler and Bartlet verlus Hardyman*.

In old times, after Judgment given in Debt, the Obligation was demanded, because the Duty was changed into another Nature; but since Writs of Error and Attaints have been so frequent, the Judges thought it dangerous to Cancel the Deed, 6 Rep. 46. *Higgins Case*.

Execution.

Execution.

IN *Scire fac'* on Judgment in Debt upon a Bond, Course of the *Kings-Bench* is never to recite the Term of the Judgment given; *aliter* in the *Common-Bench*, 1 *Keb. Tr.* 13 *Car.* 2. fo. 104. *Hatton* and *Jackson*.

A Writ of Error is no *Superfedeas* to stay Execution, without Special Sureties, to pay the Condemnation Mony, *Cro. Jac.* 350. *Goldsmith* versus *Lady Platt*.

The Action was laid in *Comberland*, in Debt on Bond, and Judgment to Recover against Administrator: The Plaintiff cannot bring a *Scire facias* in *Westmorland*, but in the same County where the first Action was laid, *Hobart* p. 4. *Musgrove* and *Wharton*.

Two are bound in an Obligation jointly and severally, and the Obligee Sues one of them in the *Common-Pleas*, and the other in the *Kings-Bench*; and a *Capias* against him in the *Kings-Bench*, and took him in Execution, and after took *Elegit* against the other, and had Lands and Goods delivered in Execution, as he might; the other who was in Execution by his Body, had an *Audita Querela* and was delivered; and because the Judgment in that case must be, that he be Discharged of the Execution, he shall never be taken again, tho' the Land taken in Execution be *Evicted*, *Hob.* p. 2. *Q.* tho' in *Elegit* the pernaney of the profits be Executory, yet its a present Interest, and so a Satisfaction

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tisfaction, 1 *Rolls Rep.* 8. *Coxley and Lydi-*
de.

If Debt be brought upon an Obligation against two, upon a joyn^t *Præcipe*, and the Plaintiff hath Judgment to Recover a joyn^t Execution ought to be sued against both. But if the Suit were by one Original and several *Præcipe*'s, Execution may be sued against any of them, 1 *Leam.* 288. agreed per *Cur.* 1 *Rolls Rep.* 44. *Banks Case.*

A. and B. are joyn^{tly} and severally bound to C. C. took out a *Protest* against them by several *Præcipe*'s, and had two several Judgments, and took out two several Executions of one Test. (*viz.*) *Fieri facias* against A. and *Ca. Sa.* against B. Q. if the Writs are well awarded, here the *Fieri facias* was Executed for all, and therefore no *Ca. Sa.* shall Issue out, *Winch Rep.* p. 112. *Holts Case.*

If two are bound joyn^{tly} and severally to me, and I Sue them joyn^{tly}, I may have a *Capias* against them both, and the death or escape of the one, shall not discharge the other: But I cannot have a *Capias* against one, and another kind of Execution against the other; because, tho' they be two several persons, yet they make but one Debtor, when I Sue them joyn^{tly}; But if I Sue them severally, I may sever them in their kinds of Executions: But yet so, if once a very Satisfaction is had of one, or, against the Sheriff upon an escape of one, the rest may be relieved upon an *Audita Querela*, *Hobart* p. 59. in *Fosters Case.*

One of the Obligors was in Execution by *Ca. Sa.* and the Sheriff *voluntarie permittit ad Largum*: This was pleaded by the other Obligor: Judgment *pro Querente*, for the Execution against one is no Bar, but that he may Sue the other; and tho' he escaped, so as the Plaintiff is entitled to an Action against the Sheriff, yet that shall not deprive him of his remedy against the other; *aliter* if he had pleaded the Sheriff, &c. by the License or Command of the Plaintiff, *Pro. Car. 75. Whittacre and Hamkinson.*

Two are bound jointly and severally in an Obligation, one was Sued, and taken in Execution, and afterwards the other was Sued and taken in Execution, and afterwards the first escaped, and the other brought *Audita Querela*; it lies not: And though the entry be *quod Unica fiat Executio*, yet that shall be intended to be an Execution with Satisfaction; and tho' one dye in Execution, yet the taking of the other is lawful. And the difference is, where one is discharged out of Execution, by the act of the party himself, to whom he was indebted, as by a Release, making him Executor, &c. there its a discharge of both, but not where one is discharged by his own act or the act of a Stranger, 5 Rep. 86. b. *Cro. Eliz. 573. Blomfeilds Case.*

Tho' these words are not entered (where two Obligors are Sued by several *Processus* and several Declarations and Judgments) *unica tantum fiat Executio*, yet its no Error, 1 Rols Rep. 44. *Banks and Chamberlain.*

Smith

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Smith recovered against *C.* in Debt on Bond 40 *l.* and 110 *l.* in another Action, and in another Action *C.* recovers against *Smith* 100 *l.* *Smith* desirous to be out of trouble moved the Court, that all shall be defaulted out of his Damages, which he had recovered against *C.* but *C.* would not consent, and because *C.* was not dwelling in any certain place, *Chamberlein* and *Doddridge* Order, that *Smith* shall pay his Mony to the Sheriff, and the Sheriff to bring it into Court to remain there, so that *Smith* might have his Execution as well against *C.* as *C.* against him, 2 *Rolls Rep.* 327. *Smithson* and *Cage*.

Where and by what means an Obligation is good in its Creation, may be defeated, gone, extinct, or discharged by matter ex post facto, in deed or Law.

By Concord or Agreement. *Vid. supra.*

By Defeasance. *Vid. tit. Defeasance.*

By Release in Fait. *Vid. titulo Pleading Releases.*

By Release in Law.

IF a Feme Obligee takes the Obligor, or one of the Obligors to Husband, its a Release in Law of the Debt; but if Feme Executrix takes the Debtor to Husband, its no Release in Law; but only suspended during the Coverture: For otherwise, it might be a *Devastavit*, which is a wrong

the Law will not suffer, 8 Rep. 136. Sir John Needhams Case, Cro. Litt. 264. b.

If there are two Women Obligees, and one of them take the Obligor to Husband, its a good Release in Law, Co. Litt. 264. b.

If the Obligee make the Obligor, or one of the Obligors his Executors, its a Release in Law of the Debt; yet it is not absolutely a Discharge of the Debt, for the Debt remains as Assets in the Hands of the Debtor Executor; and is *quasi* a Release in Law, because he cannot be Sued; but its a meer suspension of the Action: But where Feme Debtee takes Debtor to Husband, or a Man Debtee takes the Debtor to Wife; this is a Release in Law for ever; and personal Actions once suspended, are ever suspended.

But when the Obligee makes the Executor of one of the Obligors, (who is chargeable to that Debt) his Executor, its not a Release in Law of that Debt; for he hath nothing thereby in his own Right, but is only to use an Action in Right of another, Cro. Car. 372. Dorchester and Web.

The granting of Letters of Administration to one or more of the Obligors, is no Discharge of the Obligation; or if the Obligor make the Obligee his Executor, its no Discharge, 8 Rep. 136. Sir John Needhams Case, 1 Keb. 313. Locker and Smith.

When

Obligations and Conditions. 475

When its said, if once suspended, ever suspended, that is meant where the Action is suspended by the act of the Obligee: Obligee makes the Wife of one of the Obligors Executrix, and dies; the Action is suspended and extinct. The Release and Discharge in Law of one Obligor, Discharge the other, *Hob. p. 10, Fryer. and Guildridge.*

If Obligee makes the Obligor Executor, this is a Release in Law of the Action, but the Duty remains, for which the Executor may retain so much Goods of the Testator, *Co. Litt. 264. b.*

In what Cases Extinguishment, or, Discharge of part of the Condition, shall be a Discharge of the whole.

IF a Man be bound to Build an House, and the Obligee Discharge him of part, its a Discharge of the whole, *4 H. 7. 6. b.* So if a Man be bound to go with A. B. and C. and the Obligee Discharge him of C. he is Discharged by this to go with A. and B. the Condition is entire. *ibid.*

If the words consist of two parts in the Disjunctive, &c. and both are possible at the time of the making; and before the time of performance, one of the things becomes impossible to be done by the act of God, of the Law, or of the Obligee, in such case the Obligation is discharged for ever. *Vid. supra sub titulo Disjunctive Conditions, and Tender and Refusal.*

If the Condition be in Advantage of the Obligor, there if be discharged of part, he shall do the remainder: As one is bound to Till all my Land in D. and I discharge him of parcel, he shall do the remaining; but if I let 20 Acres to a man rendring Rent, and after an Obligation is made for payment of it; if Obligee enter into parcel, the Obligation is dissolved in the whole, for all this is in Advantage of the Obligee. *H. 7. b.*

If the Obligation depends upon some other Deed, and that the Deed becomes void, in this case the Obligation is become void also; as Bond conditioned for performance of Covenants in an Indenture; and afterwards the Covenants are discharged or become void, by this means the Obligation is discharged for ever: So Condition to pay Rent on a Lease *pur Ans.* and the Lessee is evicted by *Eigne Title*, whereby the Rent in Law is gone, the Obligation is gone also; but *aliter* if Eviction be of part of the Land. *Vid. supra.*

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Discharge of part, is a discharge of the whole, 2 *Keb.* p. 788. *Vere* and *Langley* against *Cumbrden*, &c.

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Discharged by Act of Oblivion

Discharge of part, is a discharge of the whole, 2 K. 4. p. 788. Treas and Lawley against Cambridge, &c.
If a Debt be delivered to be Cancelled to the party himself, yet if it be not Cancelled, and the other party is again, it remains a good Debt, 20. 28. Elix. Trin. 1571 and 1572.



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vel ad diem mortis ejusdem filie, *Idem*
198.

Pro Administratore versus 3 Heredes in Gavel-
kind- *Id.* 195.

Versus Executors & Administrators.

Versus Executor sur Obligation, *Modus*
Int. 168. *Cl. man.* 204. *Ra. Ent.* 321.
Co. Ent. 127, 268.

Versus baron & feme, la feme esteant Execu-
trix devant marriage, *Modus Int.* 171.

Versus Executor Exec^r, simul cum Coexec^r,
sur Bill, *Ra. Ent.* 329.

Versus Exec^r Exec^r, *Co. Ent.* 150.

Pro 3 viris & 1 uxore, sur Obl^r fait a^r 2 &
la feme.

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Versus Executor sur 2 Obligations fait per
Testatorem pro 40 l. 2 *Browne* 73.

Versus Exec' sur bill Obligatory pro solutione
denar' ad Nativitatem primogeniti filii,
quer', *Tomp.* 115.

Versus baron & feme Executrix del Obligor,
Tomp. 149. Placitar' quod Judic' habuit
fuit versus Defendant dum sola fuit, &
quod plene administravit prater 20 l. que
executione Judicis onerati existunt, *ibid.*
Repl', quod Judic' habuit fuit per frau-
dem.

Versus Executor' per virum & uxorem super
Oblig' fact' uxori dum sola fuit, *Brownl.*
Lat. 255.

Versus Administrator', *Cl. man.* 206. *Co. Ent.*
149.

Versus Administrator' simul cum Coadmini-
stratore, *Ra. Ent.* 322.

Versus baron & feme Administratricem sur
diverse Specialties, 1 *Brownl.* 85. *Id. Lat.*
174.

Versus Administrat' Administrat' sur bill,
1 *Brownl.* 183. *Modus Intr.* 154. *Brownl.*
Lat. 173.

Versus Administrator' sur bill Penal, *Modus*
Int. 155.

Versus Administrator' de bonis non, *Cl. man.*
207.

Versus Administrator' per Executor', *Mod. Int.*
157.

Versus 2 Administrators lou un tant appiert
l'auter esteant Utlagat', 1 *Brownl.* 176.

Versus

Versus Administratrix, & son baron sur Obligation pur performance des Covenants en un Indenture del demise d'un Wine-Licence, *Brownl. Lat. 212.*

Pleadings.

Quod scriptum talem in se continet Conditionem, videlicet quod, &c. Et sic Placitat' ad judic' sine petitione auditus scripti vel Conditionis, *Ra. Ent. 154, 155.*

Barr.

Sur Counterbond, and to save harmless.

Pur saver harmless: Placitat', quod non fuit damnificatus: Replc', & monstre coment fuit damnificatus per Judicium recuperat' versus eum. Rejunctio, quod Judic' habit' fuit per fraudem, *Tompf. 145.*

Narr' sur Condition a saver le Plaintiff harmless versus un stranger; Defend' dit, que stranger port Action versus le Plaintiff, & ad Judgment, & il paid luy & saved luy harmless: Nul plea; doit aver pleaded, non damnificatus, *Co. Ent. 139.*

Puis Oyer del Condition, *Mod. Int. 191.*

Bar per non damnificatus; Repl', quod denar' fuer' insolut', & Obligee fait Executor, qui arrest Quer' per Lat' & detinuit quousque solvit denar' cum missis. Demur inde, *3 Brownl. 174.*

Similis

Similis Bar; *Repl'*, quod denar' fuer' insolut' per quod Obligee minabatur & conabatur arrestare quer' & quod querens illos ei solvit, & sic damnificatus, *Asb.p. 247.*

Similis bar; *Repl'*, quod feme prist' baron, & puis ils sue Original & Cap' sur Oblig' pro denar' insolut' per quod querens pro exoneratione sua a scripto & solutione partis debiti expendidit 30 s. *Rejoynd'*, quod Def. post Original & Cap' prosecut' pro exoneratione querentis solvit tot' debet & mis. secte, & delib' quer' scriptum cancelland', & traverse quod querens expendidit 30 s. Issue inde tender, sed Def. nil dicit, 1 *Brownl. 107. Id. Lat. 188.*

Replie', quod Plaintiff solvit debet' ad diem & issint damnificat', *Modus Intr. 191, 192.*

Non damnificatus per 3 scripta specificat' in Conditione, nec per eorum aliquod vel sectam in Lege superinde, *Her. 302.*

Quod Def. solvit denar' ad diem, & sic indempn' conservavit querentem. *Replie'* Protestando, quod non indempn' conservavit pro placito dicit, non solvit denar' ad diem, 3 *Brownl. 118, 119. Idem Lat. 193.*

Similis bar; *Replie'*, non solvit denar', 3 *Brownl. 119.*

Quod Creditor obtinuit Judicium versus quer' in B. R. & Def. super requisitionem quer' solvit denar' in exoneratione Judicii, & Demur' inde, *Co. Ent. 199.*

Bar by non damnificatus; Plaintiff Repl', quod il fuit sued al Exigent, & issint damnificat', *Modus Int.* 195.

Ad Obligationem pro securitate querentis de altera Obligatione 200 Marcarum: Bar, per non damnificatus: Repl', quod R. S. recuperavit 200 Marcas versus eum coram uno Vic' Lond' in computatorio suo. Rejoynd', quod non habeatur tale Record' recuperationis: Surrejoynd', quod habeatur tale Record' & petit breve ad certificand' Justiciar' utrum habeatur tale Record' necne, 1 *Browne* 208, 209.

Oblig' a saver hamléf; Pled', quod solvit denar' & sic acquietavit, *Tomp.* 158.

Plaintiff non est damnificatus (le Plaintiff esteant bayle); Repl', quod fuit damnificatus, & monstre coment (*viz.*) per Judicium sur Scire fac' versus ipsum, *Tomp.*

171.

Al Counterbond cum Conditione ad indempnem conservand' un Surety. Def. placitat, quod solvit denar' in Conditione (tal' die) & sic indempnem conservavit. Repl', Protestando non indempnificavit, &c. pro placito non solvit, prout, &c. Rejoynd', quod solvit ad exit' superinde, *Brownl. Lat.* 193.

Aliter, quod Def. solvit al Obligeo 31 l. 102. (tali die) in Aula Hospitii de *Cliffords-Inn.* Et perinde exoneravit quer' a solutione denar' in Conditione ratione cujus quer' non damnificatus fuit per Def. de prædict' Oblig' 60 l. per Quer' & Def. al Obligeo fact'.

fact' & deliberat: Repl, quod Def. non solvit predict' 3 l. 18 s. al Obligee, prout, &c. *Brownl. Lat. 194*

Aliter per Administratricem quod Intestatus in vita sua solvit denar' al Obligee juxta Conditionem: Et sic Quer' fuit indempn' conserv': Repl. protestando, quod Intestatus non indempnem conservavit quer, prout, &c. Pro placito, quod non solvit in vita sua denar' al Obligee secundum Conditionem, *Idem 194*

Al Count super Oblig' cum Conditione ad indempnificand' Quer' ab omni damno evenien' occasione, quod ipse Obligatus fuit cum Def. in 7 Obligationibus ad solvend' 20 s. per Annum quatterialium pro termino 7 annorum, si Def. & Obligee tamdiu viverent. Bar, per non dampnificat: Repl, quod Quer' fuit dampnificat' (eo quod Def. non solvit unam quatterialium solutionum secundum Conditionem septime Obligationis) per solutionem 20 s. al N. le principal Obligee. Repl. protestando, quod Quer' non solvit predict' 20 s. Pro placito, quod N. relaxavit Def. ante diem per Quer' in replicatione sua pretenf. Morat' in lege specialis ad rejunctionem. Eo quod est decessus a barra sua, &c. *Id. 228, 229.*

Repl' Vic' ad placitum Ballivi de non dampnificat', Quod Def. existen' ballivus Subvic' permisit bona seisisa per Fieri fac' fore rescussat' & asportat', per quod Quer' devenit onerabilis, &c. *Id. 256.*

Al Action de Det sur Counterbond Def. dicit, quod ipse solvit al principal Obligee 10 l. 10 s. juxta Conditionem, & sic bene & sufficien' indempnem conservavit quer' ab Obligatione del principal Obligee; ac de omnibus Actionibus sectis custag' damnis Judiciis executionibus & demandis predict' Oblig' concernen' juxta Conditionem, *Brownl. Lat. 257.*

Aliter, quod Quer' a tempore confectionis scripti (al principal Obligee) hucusque non fuit damnificatus proinde seu de aliquibus custagiis damnis seu detrimentis ratione ejusdem scripti surgen' juxta conditionem, *Id. ibid.*

Narr' sur Counterbond versus Def. unum Collectorum reventionum Novi Rivi duat' usque *London.* Bar' puis Oyer del Condition' que fuit ad indempnem servand' quer' ab omni damno ei even' ratione Def. existen' Collector' partis reventionum Novi Rivi, &c. Def. plead, quod Quer' (ad aliquod tempus ante breve impetrat') non fuit damnificatus ratione predict' Oblig' in Conditione predict' recitat. Repl', quod Def. recepit 23948 l. 4 s. 6 d. de redditu & revention' Novi Rivi, quas non solvit Thesaurario Societat' dicti Rivi: Unde Quer' minatus fuit implacitari proinde ratione cujus quer' coactus fuit agreeare ad solvend' 150 l. &c. Rejoynd', Def. confesse receit de 21391 l. 6 s. 5 d. Mes que il ad paid ceo al Treasurer de dit Society within one Month after. Et traverse

verse la receipt de 23948 l. 4s. 6d. prout,
Brownl. Lat. 208.

Al Obligation ove Condition, que Def. indempnifiera le Plaintiff d'un Bond en quel il deveign oblige pur performance des Articles per un *J. J.* Bar^r, que *J. J.* performe les Articles & que le Plaintiff fuit damnifie. Demur^r, *Winch's Entry* 187, 188.

Condition to save the Plaintiff harmless of all Actions and Damages that may arise upon the release of the Defendant out of Execution (being then in Execution at the Suit of the Plaintiff) from all persons that may molest him concerning the said Release: Bar, that a Plaintiff was affirmed in the Court of the King at *York* against *A. N.* for 100 l. and that the Defendant and one *H.* was his bail. The Plaintiff had Judgment against *N.* and also against the bail, and the Defendant upon this was taken in Execution, and the Plaintiff releas'd him, which is the same Release in the Condition, and so concludes he saved him harmless. Repl^r, The Plaintiff confesseth the Plaintiff, Bail and Judgment; but saith, before the Defendant was taken in Execution, *H.* the other Bail gave him Security for his Money; and in consideration of this, the Plaintiff promised *H.* that he would take Execution against the Defendant, and that he will not release him without the consent of *H.* upon which *H.* had procured him to be taken in Execution;

tion; And then the Defendant moved the Plaintiff to discharge him, who acquainted the Defendant with his Promise to H. and upon this the Defendant makes this Obligation with Condition *prout*, and then he discharged him: And H. brought an Action against the Plaintiff in B.R. for breach of the Promise, and had recovered 150*l*. *Et sic fuit damnificatus. Demur' general inde, Winch. Ent. d. 271 usque 280.*

Vid. this Case in *Hob. 1269. Wilden and Wilkinson, & supra: Per Cur'*, the Action well lies.

Condition to save harmless the Town of C. from the charge of E. S. Sister of the Defendant, and the Child with which she was pregnant. *Bar, per non damnificatus: Bar*, That the said E. S. had a bastard Child born in the said Town; and the said Town was, by a Sessions Order, charged with the Keeping and Maintenance thereof. *Et sic damnificatus; Demur' inde, Winch p. 325.*

Condition to save harmless from an Obligation made to the Queen, for the true Execution of an Office: *Bar, per performance of the Condition of the said recited Obligation*, and that the Plaintiff never was damnified. *Demur' inde. Id. p. 326.*

Count sur Obligation for the Governours of the Hospital of *Bridewell*, and *St. Thomas* Hospital. with Condition to discharge the City of *London* from a bastard Child. The Defendant pleads Letters Parents for the

the Incorporation of *Bridewell*; and it appears not that the said Governours have power to take or sue such Obligation. *Demur' inde. Winch. Ent. p. 328.* Judgment for the Plaintiff.

Pleas en Abatement.

IN Debt sur Oblig' Def. plead al breve, quod sont deux Vills de C. & nul sans addition. Repl', Estoppel per Obligation a pleader tiel Plea. *Demur' inde; & respond' ouster. Ra. Ent. 159. b. 160. a.*

Special Matter, quod il fuit gwest in L. & non commorans in L. Repl', quod il fuit commorant en L. *Demur' & respond' ouster, Id. 160.*

Plea al breve, quod puis darreine continuance solvit parcel & issue sur ceo, *Id. ibid.*

Misnomer pleaded, *Cl. Man. 402. Repl. 435.*

Plea al breve Receipt of parcel per Acquittance. Repl', quod ceo fuit pur parcel de auter Debt, *Ra. Ent. 160.* Repl', quod fuit pur parcel del Debt demanded, & Issue.

Plea al breve, quod un des Plaintiffs est mort devant impetration brevis illius. Repl', quod & superstes, *Id. 161. a.*

De plaint, pur ceo quod Def. fuit obliged al un J. S. sicome al Plaintiff en un escript, & n'est specified en le plaint, ou le dit J. S. est vivant ou nemy, 1 *Browne 4.*

Plead

Plead variance enter le Declar' & le Obligation. Repl', quod def. ne doit pleader ces plea en abatement puis Imparlanee.

Modus Int. p. 200.

Bar per Minas.

AL Det sur Obligation, *Ra. Ent. 156. ibi.*

Writ. 272.

Simile sur Bill, 1 *Brown. 181.*

Simile per Communitatem, *Ra. Ent. 156. ibi.*

Simile per Canonicos, 18 *H. 6. 8.*

Al 2 Bills de mesme date, *Hern. 30. pp. 28.*

Quod Quer' per alios minatus fuit. Def. de captione & imprison' nisi fecerit scriptum, 28 *H. 6. 8. Cra. Elin. 8. 6.*

Per Minas Major' de Lond' al Obligation fact' nuper Camerario Lond', al Actione per eum modo Camerar' Successor, *Tomp. 109.*

Bar per Minas; Repl', quod Def. fecit billam ex spontanea voluntate & non ob metam Minarum, *Brown. 181.*

Bar by Duesa 107.

SUe federal Obligations, *Brown. 181.*

Al Debr sur Oblig', *Ra. Ent. 156. ibi.*

Det sur Obligation versus Major', Vic', & Communitat'. Bar', quod Major fuit imprisonat' quousque ipse Vic' & Communitas fecerit scriptum. Demur' inde, *Ra. Ent. 251.*

L 1

Bar

Bar per dureſs; Repl^r, quod Def. Indebitatus
fuit quer' in 181, quod Quer' procuravit
eum arreſtari per warr' ſur Lat', *Aſſ. 248.*

Repl' quod Def. commiſſus al' Fleet in Exe-
cution' ad ſect' quer' ſec' ſcript' pro ſoluc',
& traverse plea per dureſſe, *Id. 249*

Bar per releaſe; Repl', per Dureſs. *Ra. Em.*

Post Oyer ſcripti Obligat' & Conditionis
Defend' placitat' per Dureſſe, 2 *Brown 99.*

Bar per Dureſſe; Repl', quod Def. fuit a
large & fiſt Obligation ſpontaneouſment;
& ne que per Dureſſe de Imprisonment.

Brown 100.

Bar per Recovery en autre Court.

Defend' placitat', quod eſt Actio depen-
den' in London' ſuper idem ſcriptum
non diſcontinuat'. Repl', quod nullum
tale habeatur record', *Hob. Ent. 222, 223.*

1 *Sanders 136 Ric. and Knights.*

Per Conventi Baron.

De per Bill ſur Obligation. Bar, quod
querens fuit cooperta de viro tempore
confectionis ſcripti. Repl', quod fuit ſola,
Ra. Em. 168. Placita gen' & ſpec' 313. Ver.
Intr. 74.

Quod Quer' die proſecutionis brevis Origi-
nal' fuit cooperta de viro. Repl', quod
fuit ſola, *Ra. 168.*

Per

Per deins Age.

A L Debt sur Obligation, *Re. Ent.* 163 bis.
Cl. man. 395. *Tomp.* 427.
 Simile ad Bill, 1 *Brownl.* 88. *Wilk.* 270. *Repl.*
 quod Def. est plene ætatis, *Brownl. Lat.*
 p. 176.

Per Patriam all mutuat' deins age al Bill.
Repl. Def. fuit Indebitar' Quer' in denariis
 promedicamentis, & fecit billam pro secu-
 ritate solutionis. *Repl.* quod non fuit in-
 debitar' pro medicamentis, *Asb.* 241, 242.
Brownl. Lat. 175, 176.

Per non est factum.

A L Det sur Obligation, *Re. Ent.* 160, 180.
Asb. 191.
 Sur Bill, *Modus Intr.* 187.
 Per non sunt facta, *Placita gen' & spec' p.*
 344.

Non est factum Testatoris, 10 *Rep.* 120.
 Det de 800 l. Def. patit audit scripti. Quo
 lecto Def. dicit, quod scriptum non war-
 rant breve eo quod in scripto sunt hæc
 2 verba Octingentam, quæ sunt nullius
 significationis alicujus summe certe. Judi-
 cium superinde pro Defend. cum missis,
 3 *Brownl.* 150.

Det versus Priorem sur Obligation fair per
 predecessor. Bar. quod nuper Prior ante
 consecrationem scripti resignasset Prioratum,
 & postea abstulit Commune sigillum &
 L 1 2 fecit

fecit scriptum, & issint non est factum,
Ra. Ent. 179.

Quod quer' solvit denar' debet' & scriptum
& quer' deliberavit scriptum defendenti
nomine acquietancie, & postea absulit
script' & sic Non est factum, *Idem 180.*
Dyer 51.

Det sur Obligation 30 l. Bar, quod fecit
scriptum Querenti de 20 l. & quer' post
sigillationem, & rasit scriptum & fecit 30 l.
Repl', quod scriptum fuit rasum ante sigil-
lat' & deliberat' postea. Et traverse razure
post deliberacon', *1 Brownl. 90.*

Quod billa fuit de novo script' & interlineat'
his verbis, *Wilk. 277. 1 Browne 192. Mod.*
Intr. 190.

Per deletion' & interlineat' in Indorsamento
scripti, *Tompf. 182. 3 Br. 135.*

Per razure & interlineacon' in Indorsament',
Mo. 80. 1 Br. 213. Modus Int. 189.

Defendant pleads razure & obliteration del-
sum de 20 l. & inseruit summam 30 l.
Repl', quod razure fuit fait ante sigillatio-
nem & deliberation' scripti. Rejoyn',
quod fuit fait post, *Brownl. Lat. 177,*
260.

Super razure de Vill in Condition, *Brownl.*
Lat. 258.

Pro deleaco' & interlineacon' in Indorsa-
mento scripti post deliberation' inde.
Repl', quod Quer' non oblitteravit nec de-
levit aliquod in Indorsamento prout, &c.
Brownl. Lat. 202.

Def.

Def. placitat, quod obligatio sigillat' & deli-
berat' fuit cum spatiis & intervallis, *Ref.*

Entr. 333, 334

Non est fact' per misseur del Condition,
Tomp. 173.

Det sur Oblig' 20 l. Bar, quod Def. est Laicus
& concessit solvere script' 10 l. & script'
sic fuit ei expositum, *Ra. Ent. 180. 1 Browne*
213. Modus Intr. 206.

Bar, quod script' fuit ei lectum en auter
sum, & ove uel Condition, & issint non est
fact', *Ra. Ent. 180. b. bis.*

Bar, quod concessit facere script' pro solucon',
6 l. ad 2 dies cum Conditione si un B.
foret inductus in Ecclesiam tunc vacar', &
scriptum est fact' cum alia Conditione, *Id.*
180.

Ad scriptum simplex: Bar, quod concessit
facere scriptum cum Conditione, *Id. 180,*
181. ter. Placita gen' & spec' p. 260.

Quod concessit facere script' cum alia Con-
ditione, *Ra. Ent. 181. 3 Br. 133. Brownl*
Lat. 201.

Attaint: Bar per release. Repl', quod ipse
Laicus concessit facere relaxationem de
debito tantum, *Ra. Ent. 91.*

Bar per release: Repl', quod concessit facere
relaxation' de Arreragiis redditus, & non
relaxcon' de ingressu in terras pro Condi-
tione fract', *2 Co. 7.*

Bar per delivery come Escrow, south certain
Conditions que nunque fuer' performat',
Tomp. p. 141. Et Repl' Vid. 154.

Quod fuit deliberat' al 3^a person, ut Schedule
sur Condition, *Modus Intr.* 188.

Quod Def. scribi fecit scr' deliberavit ut
Schedulam, ad intent' quod un J. pone-
retur in timore, ita quod personalit com-
pareret, *Ra. Ent.* 12.

Quod liberavit script' al W. Indors. cum
Conditione stare arbitrio, & tunc liberand'
quer' ut fact' *Id.* 181.

Bar, quod fuit deliberat' ut Escrowe delibe-
rari ut fact' suum si fregerit Arbitrament,
& nul Arbitrament fuit fait & issint Non
est fact', *Id.* 181. *b.*

Quod Quer' liberavit scr' al J. deliberand'
querenti qui recusavit illud accipere, per
quod J. reliquit scr' cum querente ut
Schedulam non ut factum. Demur' inde,
Co. Ent. p. 145. *Dyer* 167.

Quod Def. Laicus deliberavit scr' ut Schedu-
lam deliberand' querenti postquam un R.
invenisset Def. securitat' ad ipsum indemni-
conservand' versus quer' de denariis in
scriptis, *Ra. Ent.* 181. *Vet. Ent.* 18.

Simile 3 Br. 154. *Brownl. Lat.* 201.

Simile quando Quer' faceret Defendenti scr'
relaxationis, *Ra. Ent.* 181.

Det sur 2 Obligations, quoad 1 Oblig', quod
deliberavit ut Schedulam sub Conditione,
quod Quer' faceret Def. relaxcon', quoad
2 Oblig' Conditions performed special',
Id. 182.

Quod

Quod fecit script^o, &c. sub Conditione quod si Deodanda pertinerent Majori scri^o foret custodit^o ut Scheda, sed si pertinerent querenti Eleemosynario Regis scri^o foret deliberat^o ut fact^o. Et quod Deodanda pertinent Majori, *Ra. Ent. 198.*

Simile sub Conditione quod Def. ostenderet querenti sufficient^o materiam pro exoneratione relevii petit vel solveret quer^o 100 l. quos obtulit, *Id. 181.*

Simile sub Conditione quod quer^o faceret Indenturam defecant^o, *9 Co. 137.*

Simile de Colloquio habend^o de denariis solut^o ubi scri^o fuit deliberat^o sine Colloquio, *3 Br. 134. Brownl. Lat. p. 202.*

Simile sub Conditione quod quer^o deliberaret Def. 100 Modios salis, *Ash. 222.*

Bar per delivery commune Escrow al B. deliberat^o esse Querenti si Defend. nemy fait tiel chose, quel chose il fait & B. deliver le script^o al querenti, & issint non est factum, *Ra. Ent. p. 181. b.*

Ad Obligat^o, Bar protestando illam deliberavit cuidam J. ut Schedulam sub tali Conditione. Pro placito dicit, quod quer^o relaxavit post consecution^o ejusdem. Replik^o, quod primo deliberavit scri^o relaxationis ante consecutionem Obligationis; Absque hoc, quod deliberavit post consecutionem ejusdem, *1 Browne 190.*

Quod fact^o predict^o fuit deliberat^o sine date, & Plainiff^o postea posuit le date, & issint factum, *Cro. El. p. 800.*

*Sur Oblig' port per le Major & Burgesles de
Lynn Regis. Bar per non est factum, per
ceo que a misnolmer, Winch. Ent. p. 201.
10 Rep. 120. a.*

Per Defeasance.

DEbt sur Oblig'; Bar, quod Quer' per scriptum Indentat' demisit Rectoriam Def. pro annis sub sepealibus Conditionibus. Et in fine scripti concessit, quod si Def. teneret Conventiones tunc esset vacua. Et Def. in fine primi anni sursum reddidit terminum & durante anno illo tenuit Conventiones. Repl', protestando, &c. Pro placito quod Def. non solvit redditum. Rejoynd', quod solvit redditum, *Ra. Ent. 183.*

Det sur Recognizance; Bar, quod provisum fuit per Ind' defeasance, quod si Def. solveret 20 l. Querenti predict' Recogniz' foret vacua quod Def. fecit. Repl', quod Def. non solvit, 1 Browne 187.

Bar per defeasance pro solutione denar' ad separales dies; Et quod solvit, &c. Repl', quod non solvit denar' talidie. Issue inde, Ra. Ent. 185.

Det sur Oblig'; Bar, quod Indentura dimissionis Rectorie fact' fuit cum defeasance, ut supra; & quod Def. performavit omnes Conventiones. Repl', quod Def. die Dominico intravit & expulit quer'. Rejoynd', quod alio die intravit pro redditu insoluit &

& traverse le quod intravit prædicto die Dominico, *Ra. Ent. 184.*
 Placitat', quod Quer' puis Obligation Covenant, quod si Def. performaret Conventiones in Ind' content' nunc script' Obligar foret vacuum; & plead Performance. Quer' quoad partem plede Estoppel pur Recov' des deniers per Ind. solvend'. Rejoind. nul tel Record; *Tempf. 174, 175.*

Administrator pled' Recognis. & non Assets ultra. Plaintiff Repl' & confesse le Recognisance; mes dit què fuit un defeasance pur performance des Covenants queux il ad performed, *Co. Ent. 147.*

Al Count sur Oblig' ove Condition que un *W.* (sur receipt de 100 l. at the hands of Madam *H.* for the Service of five years, al rate de 20 l. per Annum) serviret Madam *H.* pur tout le terme; mes si *W.* morust devant expiration de term; or if the said Madam *H.* should discharge him upon three Months Warning before the term expire, then *W.* should pay so much of the said 100 l. as should be arrear, and not due to him for Service, according to the rate of 20 l. per Annum.

Bar, that *W.* had well served Madam *H.* until such a time, and then she discharged him of her Service, and upon this *W.* was compelled to depart her Service against his will; and further, that Madam *H.* did not give to *W.* a Quarters Warning upon discharge of him from her

her Service. Repl', That a Quarter Warning was given to the said *W.* by Madam H. Rejoynder and Issue, That no Warning was given, *Brownl. Lat. 177. 178.*

Ad Obligationem cum Conditione pro solutione denar' quando frater quer' perveniret ad ætatem 21 ans; Et si frater obiret tunc denar' forent solut' sorori quer' ad eundem terminum. Bar, per Conditions performed per solucon' denar' juxta Conditionem. Repl', quod Def. non solvit denar' juxta Condition, *Id. 193.*

Al Count sur Obligation pur payment des deniers al several jours. Bar per payment de parcel al deux del jours de payment. Et que Plaintiff exhibited sa bill versus Defendant devant les auters payments devient due. Repl', le Plaintiff prist Issue sur un del payments en la bar, *Id. p. 221, 222.*

Al Count port per le Governour & East-India Company vers un de leur Factors sur Oblig' ove Condition que Def. feroit son service, & rendrist son account. Bar, quod Def. bien & veray feroit son service, & rendrist son account accordant al Condition, *Id. 227.*

Oblig' ove Condition, quod Def. bene & fideliter exerceret officium Ballivi circa statum Quer'; al que Def. pledes Conditions performed generalment. Repl', quod Def. non executus fuit officium Ballivi status quer' bene & fidelit' juxta Condition; and shows how, *Id. 255.*

Al Debt sur Obligar' Def. pleades en bar Article de Defeasance delivered with the Bond, pur payment del Annuity durant le vie del Estranger solvend' ad Festa *An-nunciationis & Michael.* vel infra 20 days, prox' per æquales portiones. Et quod si le Def. & deux auters queux soient parties al Articles obirent durant le vie del dit Estranger, quod tunc le survivor sur request, within one Month, deveniret oblige ove un auter Surety tanti valoris. Et Def. averre payment durant le vie del Estranger, & que il morust tali die, & que les deux auters parties al Articles, ove Def. sont en vie. Repl' protestando, que les Articles ne fueront faits, pro placito que Def. & un del deux parties nominate tantummodo sine altero deveni' oblige. Absque hoc que le Def. & les deux auters per aliquod script' steter' tenuer'. Def. demur specially: Adjudg'd an ill Traverse, *Winch Ent. 207 ad 209.*

Al single Bill pur payment del 30 l. tiel jour. Bar per un Defeasance fait per le Plaintiff tempore confectionis bille recitant le dit bill & deux auters, & Covenant per dit Defeasance que le dit bill ne serra sued ou le Def. mis al charges al disprover que ne fuit Partner ove *Edwardo Cooper,* & monstre un suit en *Chancery*; mes ne monstre per le Plea que la bill sur que l'Action est port est un del bills mentioned en le Defeasance. Sur que Plaintiff Demurs generally, *Id. p. 237.*

Bar per Conditions performed.

Payment.

AL Debt sur Oblig^r ove Condition de
payment al 1 day, *Ra. Ent.* 185. *Placit^r*
gen^r & spec^r 326.

Conditions performed pleaded al Obligation
pro payment, demur al several jours,
Modus Int. 178.

Al 2 jours de payment, *Ra. Ent.* 184, 185.

Simile ove divers jours de payment, *Id.* 170,
185. ter.

Simile, quod solvit denar^r hucusque solvend^r,
Id. 185.

Al 2 Obligations ove 1 jour de payment,
3 *Brownl.* 115. *Placit. gen. & spec.* 258, 328.
Et replic.

Al 3 Obligations ubi Def. placitat several-
ment post Oyer de chescun several Cond^r,
Ash. 219. *Brownl. Lat.* 191, 192.

Condic^r pro solutione denar^r super rector^r
querentis à *Roma* cum certificatione. Bar
protestando, quod non fuit ibid^r pro pla-
cito non tulit Certificat^r inde. Repl^r, quod
fuit ibid^r & tulit Certificat^r, 3 *Brownl.*
143.

Sur Condition solvere querenti 20 l. ad fi-
nem 3 mensium postquam ipse attingeret
ad ætat^r 21 annorum, *Id.* 117.

Quod quer^r recepit annuatim pro 4 ans 8 s.
pro firma terrarum, & quod Def. ad finem
termini paratus fuit inde feoffare quer^r.
Repl^r.

Repl' protestando, quod non recepit aliquos denar' pro placito non recepit in ultimo Anno, *Re. Ent. 182* non bond

Sur bill Penal Plea solvit ad diem, *Claman. 295, 286, 287, 289.*

Bond pro solutione al several jours. Def. plede payment les 2 primer jours, & quod les auters jours nemy sunt adhuc incurred. Plaintiff Repl', il ne solvit primer payment, & Issue.

Plaintiff declares sur 2 Bonds; Defend. al 1 plede solvit ad diem, & ad 2 solvit ad diem, & que conservavit quor' indempn' ab Obligatione mentioned en lei Condition del second Obligation, *Males. Intr.*

203. Conditions performed sur 2 several Obligations pro solutione denar', *Plaintiff gen. & spec. 258.*

Bar per payment al autre lieu, & issint biens due. *Id. 277.*

Solvit ad diem, *Id. 330.* Conditions performed per solutionem al several jours. Repl' & Rejanet', *Folios 434, 435.*

Bar pbr Composition with his Creditors, *Id. Brown. 205.*

Conditions performed pro parte debiti. Et pro resid' impetravit breve Originale ante diem solutionis, *Placit. gen. & spec. 246.*

Post Oyer de special Condition fait per Def. & son fitz; Def. plede, quod solvit querenti omnes tales denar' summas quas quer' erogavit aut obligatus fuit pro filio, &c. issint

iffint quer' non damnificat; Quer' procell,
quod Defi non solvit, &c. & protestand,
quod non conservavit indemni' pro pla-
cito quod erogavit pro filio defendent'
1000 l. quas nunquam ei solvit. Rejoynd'
quod solvit, & Issue, *Mod. Int.* p. 191, 193,
194.

Bar per Delivery.

Quod Def. solvit & deliberavit querend'
frument', & denarios in satisfactione
trumenti, &c. deliberand', *Vid. Int.* 237.

Al Condition pro solutione denar' & delibe-
ratione salis, 1 Br. 38. 3 Brownl. 116.

Bar per Conditions performed. Repl' prote-
stando, quod non deliberavit saltem, pro
placito non solvit pecuniam, *Brownl. Lat.*
173, 192.

Condic' deliberare brasum. Def. dicit, quod
ipse deliberavit brasum secundum formam.
Repl', non deliberavit. Rejoynd', quod
deliberavit & Issue, 1 Brownl. 101, 102.
Tamp. 180.

Bar, quod Obligatio deliberat' per quer' mi-
nimè cancellat' post satisfaction' inde, &
quer' postea Vi & armis illud a Def. ab-
stulit, 1 Brownl. 212.

Bar, quod Obligatio deliberat' per quer' mi-
nimè cancellat' post satisfaction' inde, &
quer' postea Vi & armis illud a Def. ab-
stulit, 1 Brownl. 212.

Bar. al Obligation' Vicecom'.

Comparuit ad diem in B. R. nul tiel Record' inde 3 Br. 137. in Com. B. R. *Mid Int.* 186. *Cl. man.* 402. *Placita gen' & spec'* 366.

Der sur Obligation ove Condition fore verum Prisonarium. Bar, quod Oblig' fuit fait colore Officii contra Stat' ubi Def. fuit capt' per Liberato sur Statute Staple. Demur. *Plowd.* 61.

Ad Oblig' ove Condition de payment de 113. Bar per Stat' & quod quer' arrestavit un C. per warrant' sur Latitat', & Def. pro inlargiamento devenit rem' querenti cum C. ut ejus fidei iussor. Repl', quod C. fuit ad largum & fecit scriptum pro vero debito, & Traverse quod Obligatio fuit capt' colore officii. *Id.* 234.

Def. prie Oyer del Condition (que est pur appearance de J. C. al West. Jovis post, &c. ad resp. E. S. de placito Transgr. ac etiam hille) & donque pletes Act de Parliamēt fait 23 E. 6. ouster montrant quod les Plaintiffs ont prosecuted un Lat. versus C. rec' 3 Trin. Era. Per que il lui prist & en lous custody jusque il pro casiamēto & favore, &c. ovesque E. & P. devenue tenus & oblige al Plaintiffs en 600l. contra formam Stat. Plaintiffs confess la Latitat al leadged per Def. & monstre Latit de mēme ret'. Sur que Desend. fuit arrestu sur Latit' mention en son Plea. Et traverse le arrest fait

fait sur Latic' monstre per les Plaintiffs
Surrejoyn' & Issue, *Vidian* 199.

1 *Sanders* p. 14. *Bennet and Filkins*.

Def. pleades le Oblig' pris fuit contra formam
Statuti 23 H. 6. & Plaintiff demurs gene-
ralment. Judgm' pro Def. eo quod Con-
ditio est mala & insensibilis, *Brownl. Lat.*
222, 223.

Comparuit ad diem pleades al Obligation del
Vicount fait pur appearance del Def. sur
Latic' retorn', &c. Bar per nul tiel record,
1d. 203.

21 *Sur Obl' al Vicount ou Guardian de Fleet*

AL Oblig' & mutuar' per Guardian de
Fleet versus Surety d'un Prisoner. Def
plead al mutuaris nil debet, & al Oblig.
Stat' 23 H. 6. in bar. The Plaintiff replies
and pleads the provision in the same Sta-
tute for the Warden of the Fleet. The
Defendant demurs generally, *Wimb. Tw.*

192, 193.

Al Oblig' versus Surety del Underthef
ove Condition pur performance des Co-
venants. The Defendant pleads Articles,
1. To save harmless from all Escapes:
2. Not to execute any Writ above the
value of 20 l. absque Warranto: 3. To
render an Account within a time limited.
To the Negative Covenant he saith that
he had not executed without Warrant of
the Sheriff first obtained; and that he had
performed all the other Covenants. The
Plaintiff

Plaintiff replies and assigns a Breach per
Escape, *Winch. Ent.* p. 193 ad 197. *Norton*
and *Simms Case*, Reported in *Hob.* fo.
12.

Condition to perform Covenants, contained
in Articles made between the High-sheriff
and the Under-sheriff. The Defendant
pleads General performance. Repl', that a
Fieri facias was for to levy Debt and Da-
mages; and that the Under-sheriff had
levied part of the Debt, and returned the
Writ, but had not brought the Mony into
Court, or paid this to the Plaintiff: De-
mur' general al Repl', *Winch. Ent.* 229 ad
233.

Puis Oyer del Condition Def. pleades Stat.
22 Ed. 6. pur enlargement des Prisoners
pris sur Common Proceſſe; & que il fuit
pris sur Ca. ſa. hors de Chancery, & pur
ion enlargement fuit ceo Obligation. Demur
inde. *Id.* 273.

Bar per Stat. 23 H. 6. for letting Prisoners to
bail; & que un Capias iust issue hors Chan-
cery sur Stat. Staple & Extent sur ceo,
& que le Oblig' fuit pris pur Sheriffs Fees
per se Plaintiff al use del Subvicount de-
vant le breve de Deliberate fuit executed.
Repl', The Plaintiff confesseth the bar of
the Defendant, and further pleads the
Statute of the Statute of 29 Eliz. for Exe-
cution Fees Special Demurrer inde, the
Bond is void. *Empson's Case*, *Lutb.* p. 20.
Winch. Ent. p. 334, 335, 336. Vid. *Winch. Rep.*
fo. 19 & 50.

Bar per Acquittance, Release.

PEr general Acquittance: Repl^r, quod relaxatio Non est factum, *Ra. Ent. 197.b.*
Placit. gen. & spec. 248, 354.

Release pleaded, *Placit. gen. & spec. 346.*
Tomps. 155.

Bar per Acquittance puis le breve, Judgment de breve ove averment quod sum contained en le Acquittance est parcel del debt. Repl^r, quod fuit pur auter Debt, *Plac. gen. & spec. 320, 321.*

Acquittance al un des Obligors, *Id. 349. Ra. Ent. 197.b.*

Release pleaded primò deliberat^r, *Plac. gen. & spec. 348, 349.*

Acquittance pleaded post Darrein continuance, *Id. 348, 349.*

Que puis Darrein contin^r, Plaintiff deliberavit al Def. Acquittance del Debt ove averment que ceo est mesme Money, *Ra. Ent. 180. Brownl. Lat. 187.*

Release pleaded, & non prof. superinde, *Cl. man. 272.*

Per billam acquietancie pro parte denariorum debit^r super Obligar^r, & Non est factum pleaded, *Brownl. Lat. p. 174.*

Al Count en Det sur bill pur payment des deniers, & en Detinue pur delivery de Chival & furniture. Bar per release des tous Actions. Repl^r, Non est factum, *Id. 286.*

Count

Count sur bill pro 10 l. Bar per acquierantiam mentionan' quod billa non potest inveniri, & averment quod est ead' billa. Repl', Non est fact', *Id.* 201.

Pleadings al Arbitration Bonds.

NUL tiel Award, *Placit. gen. & spec.* 248.

Nullum fecer' arbitrium, *Tomp.* 155.

Repl', quod fecer' arbitrium & assigne la breach; & Rejunctio nul tiel award, *Tomp.* 179. *Co. Ent.* 159.

Defend' pleads payment solonque Arbitrament, *Plac. gen. & spec.* 284.

Al Det sur Bond, Def. prie Oyer del Condition (que est a performer un award d'estre fait per several Arbitrators ou al performer l'Umpirage fait per un Umpire,) & puis plede nul Award ou Umpirage fait. Repl', quod les several Arbitrators sont nul Arbitrament; mes l'Umpire ad fait Umpirage, & assigne breach per Defend' pur non-payment agarded. Rejoynd', nul tiel Umpirage, *Vidian.* p. 190, 191, 192.

Placitum al Obligation pur performance d'un award, quod Arbitrator non deliberavit Arbitrium suum ante talem diem secundum submission, *Tomp.* 147. *Vid. Towns. Tab.*

Bar al Obl', *Vid. Stat. 23 H. 6. Tomps.*

De sepealibus rebus faciend.

Pro solutione denar' & deliberat' salis,
1 Br. 82.

Quod quer' non dedit Sal nitrum ad faciend' pulverem bombardicum Quod Def. obtulit deliberare fenum quer' quolibet Anno, quod ipse recusavit accipere, & quer' non misit equum Def. pasturand'. Repl', quod non obtulit fenum, *Co. Ent. 127.*

Quod quer' recepit 8 s. annuatim pro firma terrarum; Et quod Def. in fine termini fuit parat' feoffare quer' de terris & quer' non venit ibid. Repl' protestando, quod non recepit 8 s. annuatim, pro placito quod non recepit in ultimo Anno, *Ra. Ent. 182.*

Bar.

Al Conditions de terris, & Covenants en Indenture, & Articles.

Conditions performed.

Condition de terris assurand'; Bar' quod quer' non requisivit assurance. Repl', quod requisivit Def. Conveyare secundum Conditionem. Rejo. quod non requisivit, *Yelv. 44.*

Quod paratus fuit facere relaxation' de terris & Levare finem, sed quer' non requisivit, *Co. Ent. 65.*

Quod

Quod quer' recep' annuatim 8 s. pro firma terrarum; Et Def. in fine termini venit cum facto feoffamenti super terras, & quer' seu aliquis pro eo non venit ibid. *Ra. Ent.* 82.

Quod paratus fuit facere assurance quer' ad ejus custagia; & quod deliberavit quer' omnia scripta. Repl' protestand', quod non deliberavit scripta, pro placito quod requisivit Def. venire coram Justic' de 8. ad cogn' finem & obtulit ei 6 s. 8 d. pro custag'. Rejo. quod non obtulit ei 6 s. 8 d. *Id.* 82.

Quod quer' quiete gavisus est terris feoffat' indempn' de prioribus titulis, &c. Et quod quer' requisivit Def. & filium sigillare script' relaxationis. Quod Def. sigillavit; sed filius existen' minimè Literatus requisivit script' de quer', ut ostenderet viro erudito si foret juxta Condition', quod quer' recusavit, per quod filius non sigillavit script'; Et quod quer' non requisivit ulterior' assuran'. Demur' inde, 2 Co. 1.

Quod Def. per script' feoffamenti fecit quer' sufficien' statum in terris; Et quod fuit exoneratus de incumbancia, *Vet. Entr.* 235.

Quod tenementa non fuer' onerata prioribus bargainis, &c. 2 Co. 1.

Condition' de quieta occupatione, assuran' fiend' & scriptis deliberand'. Bar, quod quer' quiete gavisus est terris; & quod Def. & alii fec' omnes assuran' per quer' devisat'. Et quod Def. deliberavit

omnia scripta. Repl' protest', &c. pro placito quod un N. Attornat' devisavit relaxac', que fuit oblat' Def. sigilland', quod recusavit. Rejoynd. quod non recusavit, 3 Br. 156.

Quod quer' non fuit damnificat' ratione priorum concession', &c. Co. Ent. 65.

Quod Def. procuravit T. & al' dimitter quer' pro annis per scriptum; Et quod Rex H. 8. dimisit al M. pro annis, durante quo termino quer' non potuit inquietari vel damnificari per G. Repl', quod Rex H. 8. dimisit prædict' M. reservando arbores & Rex Ed. 6. grant le reversion & arbores al N. in fee, qui demise per ans al G. sans impeachment, qui per servientem succidit arbores. Demur', Idem 138.

Quod quer' quiete gavisus est terris dimissis pro annis quousque Def. sursum reddidit hæredi, Repl', quod non sursum reddidit, Ra. Ent. 182.

Quod dimissio fuit sub Conditione reintegrationis pro redditu aretro. Et quod hæres reintravit post Fest' pro redditu insolut'. Repl', quod intravit ante Festum, Idem 183.

Quod Def. non impedivit quer' capere possession', & quod quer' potuit gaudere quiete usque talem diem, quo die quer' dimisit illa pro annis per Indentur'. Repl', quod quer' intravit in terras & voluit occupare, sed Def. permansit in possession' Mess. Et traverse le demise, Co. Ent. 65.

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Conditio solvere redditum quarterialem pro tenementis dimissis, proviso quod cessaret super explicatione: Bar, quod terre descendebant filie infra ætat' in gard le Roy, qui grant custodie al Lessor, Heir sue Livery & prist baron qui enter, &c. Et quod Def. solvit redditum usque expulcon? Repl' quod non expulit, &c. 3 Br. 153.

Quod non fuere alique terre in Com' unde Def. habuit reversionem. Repl' quod B. fuit seifitus de terris custumariis pro vita, & reversio earundem spectabat Def. Demur' inde, Co. Entr. 137.

Det sur Oblig' al performance de Covenants sur Ind'; Bar per performance general; Repl', quod terre non fuer' talis annui valoris, Id. 635.

Similis bar; Repl. quod non solvit redditum, Ra. Ent. 183.

Similis bar; Repl. quod die Dominico Def. intravit, &c. Rejo. quod alio die intravit pro redditu & traverse, Id. 184.

Similis Conditio; Bar, quod Def. in fine primi anni sursum reddidit terminum & duran' eodem anno tenuit omnes convenc'. Repl. quod non solvit redditum, Id. 183.

Ad Action' versus virum & uxor' super Oblig' fact' per uxor' dum sola fuit de performance Conventionum in Articulis; Bar, per Conditiones performat', Repl', Quer' protestando, quod Def. non performavit Conditiones, &c. Pro placito, quod B. dum sola fuit intravit super possession' querentis,

& ipsum molestavit in possessione clausi in Artic^o spec^o. Rejo. Def. protestando, quod B. non intravit super possess^o. Quer^o pro placito quod B. non impedivit querentem prout replicando allegavit. Rejo. per manutenentiam replicationis, & Issue inde, 2 *Browne* 64, 65.

Bar per Conventiones performat^r: Repl^o, quod post impetrationem Originalis prmissa fuer^o ruinoso pro defectu reparationis, *Id.* 68, 69.

Bar per Conventiones performat^r; Repl^o, Quer^o protestando, quod Def. non performavit Conventiones aliquas in Articulis specif. Pro placito quod Def. non solvit redditum secundum Articulos, *Idem* 70, 71.

Bar by Covenants performed; Repl^o, quod Def. non assuravit quer^o & hered^o suis quandam Aulam secundum formam Indenture, *Id.* 77.

Bar by Conditions performed; post Oyer, *Id.* 94.

Repl^o, quod Def. non performavit, &c. Pro placito, quod permisit partem prmissorum fore in decasu, *Id.* 95, 96.

Bar per Conventiones performat^r; Def. post Oyer del Condition pleades Indenture & performance; videlicet, quod solvit redditum durante termino, *Co. Ent.* 131.

Quod reparavit domos & sepes, *Id. ib.*

Quod posuit grana in horreo, *Id. ib.*

Quod

Quod terre fuer' exonerat' prioribus barganiis, &c. *Co. Ent.* 65, 135, 147, 635.

Quod habuit potestatem vendendi, *Id.* 135, 147, 635.

Quod fuit seifitus in feod' tempore Indenture facte, *Id.* 147, 635.

Quod pater in vita & filius post ejus mortem quiete gavis' fuer' terris vendit', *Idem* 147.

Quod non habuit aliqua scripta que deliberare potuit, *Id.* 135.

Quod consilium querentis non devisavit, nec quer' requisivit aliquam assuranc', *Id. ibid.*

Quod quer' non requisivit scripta vel copias ante Festum, *Id. ib.*

Quod non aravit terras, 3 *Br.* 168.

Quod performavit tales Conventiones specialiter: Et quoad Conventionem de terris non arand' placitat stat' de terris tenend' in cultura. Et quoad alias Conventiones performavit specialit'. Demur inde, *Co. Ent.* 131.

Quod cure' non requisivit novam dimissionem: Et quoad omnes alias Conventiones performavit specialit'. Repl' & Demur', *Id.* 244.

Quod 2 Lessees vel Exec' non araverunt aliquas terras præter, &c. Et quod performaver' omnes alias Conventiones. Repl', quod Defend. existens Exec' de Survivor Lessee aravit terras præter, &c. Issue inde, 3 *Br.* 167.

Condi-

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Conditions performed generally : Repl^r, quod Def. permisit Molendinum ventriticum dimissum fore discoopert^r per quod corrui, 3 *Br.* 171.

Defendant pleades performance des tous Covenants generalment. Repl^r, & Issue inde, *Co. Ent.* 66, 132, 133.

Performance des tous Covenants pleaded specialit^r. Repl^r, & Issue inde, *Id.* 63.

Al Covenant de frumento deliberand^r ; Bar, quod deliberavit : Repl^r, quod non deliberavit, *Vet. Ent.* 234.

Simile quod fuit paratus ad deliberand^r & inde dedit dotitiam querenti, &c. Repl^r, quod super notitia quer^r accessit ad locum & requisivit de Def. frumentum quod recusavit deliberare. Rejo. quod non deliberavit, *Id. ib.*

Non damnificatus pled^r, *Cl. man.* 392.

Repl^r al Conditions performed, *Id.* 433.

Ad Oblig^r ad performand^r Covenants super Indentur^r assignationis Literarum Patent^r ; Bar per Condition performat^r, 1 *Browne* 4

Bar per Condition^r perform^r sur Obligation ad performand^r Condi^r super Indentur^r barganie & venditionis terrarum querenti per Def. Repl^r protestando, quod Def. non performavit Conditiones ; Pro placito quod quer^r implacitat^r & vexat^r fuit in Cur^r requisition^r pro parcell^r terre. Rejo. quod quer^r quiete gavisus fuit prædict^r parcella terre, absque hoc quod inquietat^r & vexat^r fuit, &c. Surrejo. quod implacitat^r &

& vexat' fuit, &c. Exit' superinde, 1 *Browne* 207.

The Defendant prays Oyer of the Condition, which is for performance des Covenants in Articles: Def. pledes pro quiet' enjoyment. Repl' entry pro Rent. Rejo. Surrejoynd. & Rebutt', *Mod. Int.* 18c. 1, 2, 3.

Bar, quod Def. solvit & custodivit omnia & singula Conventiones, &c. in Ind. specific', *Cl. man.* 229.

Bar per Conditions performed. Repl', quer' protest', quod Def. non performavit Conditiones, &c. Pro placito, quod B. dum sola fuit intravit sur possess. quer' & ipsum molestavit in quieta possess. claus. in Artic' spec': Rejo. protestand', quod B. non intravit, &c. Pro placito, quod B. non impedivit quer' prout replicando allegavit. Surrejo. per manutinent': Repl' & Exitus inde, 2 *Browne* 64, 65.

Pur performance des Covenants en Indenture de Lease, sur que Def. recite les Covenants de son part & pledes performance d'eux. Repl' protestando, que Def. n'ad performed, &c. Pro placito assigned un breach, que devant Lease fait un P. E. baron del Def. fuit possess de meuse de que, &c. & que les Gouvernours de *New River* fuer' seise de Watercourse specified en le Lease, & demise ceo al Def. & sa baron pur 21 ans, si ils ou un des eux tamdiu inhabitarent in Mesuag' illo. Et que baron & Def. fuer' inhabitants en ceo quand

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quand Lease fait fuit al querenti & que ils recede del inhabitancy del dit meale, pur que le Lease fait per Governours fuit determine, & ils divert le Watercourse, & issint ne poit ceo enjoyer. Defendant Demur generally, *Vidian* 183, 4, 5.

Oyer del Condition pur performer des Covenants en Articles concernant renting des Mills, & pledes que Lessor fuit seise pur vie de feme, & en sa droit & moi, & la feme enter; & que il ad performed les Covenants jesque entry de feme. Repl, assigne un breach pur non payment del Rent en vie de Lessor, *Id.* 186.

Conditions performed secundum tenorem bille cum deliberatione averiorum cum incremento & conduct, *Pl' gen' & spec'* 281. Pur performance of Articles pro redditu. Pledes quod querens fuit Decoctor, & quod Def. solvit denar' Assignat' del Commissioners de Bankrupcy, *Tampl.* 166.

Oblig' a faire Assurance; pled' Assurance devised per Council, *Id.* 189. Et Repl' & Demur.

Condition a faire un Marriage Settlement. Repl, breach pur nemy making un indefeasible Estate, *Id.* 191.

Def. prie Oyer del Condition que est a Surrender un Copyhold-Estate al use del quer' & ses heirs, & que Plaintiff enjoyera, & donque pledes Conditions performed. Repl, & monstre pluis eigne Estate d'un que enter sur luy. Rojo. quod non intravit & Issue, *Vidian* 173, 174.

Narr'

Narr^r sur Condition a faire assurance des terres, & auxy a saver harmless le quer^r & les dits terres versus H. & C. & special non damnificatus pleaded, Co. Ent.

137.

Condition que Lessee gauderet le terre peaceablement secundum le Lease. Bar, que Quer^r surrendred la Lease, and took un novel Lease, & que tenuit terre peaceablement jesque l'entry per force del Surrender. Repl^r, non sursum reddidit, & la illuc, Ra. Ent. 182. b. 183, &c.

Det versus Executor; Condition que Lessee gauderet terres peaceablement, &c. Bar, que Lessee tenuit la terre jesque l'heire entered pur non payment del Rent, Idem 183, &c.

Pur quiet enjoyment: Bar, quod Def. & assignat^r sui expulsi fuer^r per B. Comit^r Essex^r. Replie^r, quod Def. & assignat^r sui pacifice gavis^r fuer^r. Rejoyn^r ut prius, quod B. Comes Essex^r intravit super possession^r suam, 2 Browne 81.

Quod Quer^r quiete habuit & gavis^r fuit boscum & maremilium, absque Interruptione Defendentis secundum formam, &c. 2 Br. 102.

Conditions performed pleaded, que fuit quod Def. non clamaret dotem in terris talliat^r. Repl^r, & monstre le claime. Rejo. quod non clamavit modo & forma, Tompson 198.

Def.

Def. Covenants, quod quer' quiete gaudere un Lease. Repl', & monstre le breach per primer Estate fait per Def. Rejo. quod il fuit infra ætatem tempore confectionis del primer Estate. Surrejo. fuit plene ætatis, *Tompf. fo. 100.*

Defend. pleads performance particularment. Repl', & assigne un breach en un des particulars, *Co. Ent. 27. b.*

Pur performance de Covenants en un Indenture del demise d'un Wine License: Bar, puis Oyer Def. monstre l'Indenture & grant de Roy faits al Plaintiff, & demise del Roy, per que le grant & l'Indenture devient void; and that until such a time they had performed the Covenants according to the Indenture. Demur' general al bar, *Brownl. Lat. 211. usque 216.*

Bar; Def. prays Oyer del Condition, & puis plede que les deniers fueront d'estre payes apres retorn del Neife directement a *Bantam* al Angleterre, & que la Neife fuit perde en le Voyage, *Brownl. Lat. 246.*

Repl', quod Def. non reliquit aut sursum reddidit tenementa querenti juxta Conventionem, sed custodivit possession' ultra tale tempus, *Id. 257.*

Condition to surrender a Copyhold Estate al use del Plaintiff: Bar, que le Defendant al Court tenuis tiel jour ad surrendred secundum effect' Conditionis, *Winch. Ent. p. 241.*

Conditions performed.

DEt per baron & feme sur Oblig' fait al feme dum sola fuit versus baron & feme, Executrix del Obligor. Def. prie Oyer que est pur performance des Covenants en un demise pur un Ann absolute, & post fin' Anni tunc (si partes agreearent) pro tribus Annis extunc prox' sequen' reddend' annuatim durante termino 40 l. ad 4 terminos; & Def. dic', quod Testator uist enter & tenuit pur un ann & per spatium Anni il uist performe tout son part; and Breach assigned pur non payment del 10 l. pro uno quarter' ejusdem Anni: And the Defendant Demurs, eo quod nullus redditus fuit debit' ad idem Festum (existen' primo termino) pretendant que reservation del Rent ne extent al primer Ann; mes Court tient que ceux parolx (annuatim durante termino) extend ad primum annum; *Robinson's Entries*, p. 177, 178.

Condition pro pacifica & quieta occupatione unius domus, & bar per Condition performed; & quod quer' vel assign' sui non deder' notitiam quod domus indigebat reparationibus nec fuit ullo modo damnificat'. Repl', quod quer' dedit notitiam. Rejo. & Issue sur le Notice, *Rob. Entr.* 179, 180.

Bar.

Bar per Conditions performed ; & Demur
inde, *Id.* 189.

Ad Obligation' cum Conditione pro perfor-
mar' agreamenti in billa special'. Def.
prie Oyer del Condition , que est quod
Def. super rationabili Præmunitione ob-
servaret agreamenta in billa ; & faceret
ulteriozem assuranç' & fursum redderet
totum interesse qualit' rationabil' devi-
satur per Concilium. Bar, quod Def. non
fuit rationabilit' Præmunit' ad reddend'.
Evidenc' al Plaintiff , & quod Concilium
non devisavit, *Rob.* 197, 198.

Placitum ad Narr' sur script' Obligar' ad
performand' Articulos agreamenti ubi
Articuli specialit' placitantur. Repl', quod
Def. non performavit Articulos agrea-
menti, *Id.* 227, 228.

Condition pur performance of Covenants
brought by the High-Sheriff against the
Security of his Under-Sheriff. The De-
fendant after Oyer of the Condition
pleaded , there is not any Covenant on
the part of the Under-Sheriff. The
Plaintiff prays Oyer of the Indenture ,
made between him and his Under-
Sheriff , and Demurs to the Bar , *Winch.*
Entr. 319, &c.

Al autre Special Conditions.

Bar per Conditions performed, al Obligation conditionat^r quod Def. non maritaret durant vie del Obligee sans assent del Obligee. Repl^r, quod Def. maritavit en vie del Obligee; & Demur inde, *Tompf. 194.*

Def. prie Oyer del Condition que fuit quod inveniret le Plaintiffs Daughter (que il ad married) & ses Fits boyer & manger, &c. & superinde plede Conditions performed, *Mod. Ins. p. 260.*

Pur performing Considerations specified in a Condition, *Plac. gen. & spe. 341.*

Al Obligation pro^r fideli executione officii Ballivi al un Viconte, *Tompf. 195.*

Breach pur non payment d'un Post-fine collected per luy, *Id. 197, 209.*

Bar per Condition performed sur Recognis^r *Browne 191.*

Condition a releaser un Obligation; Bar, quod nulla requisitio facta fuit ad relaxand^r. Repl^r per scriptum relaxationis devisat^r & requisit^r. Demur inde, *Dyer 218.*

Bar quod Judex Curia Prerogat^r non appunctuavit Def. facere aliquam relaxationem. Demur inde, *Co. Ent. 130.*

Condition de Sententia in Curia Ecclesiastica de Testamento. Bar, quod appellavit a Sententia, *Hen. 3 17.*

Condition, that the Defendant shall pay such a Sum to such a person as the Testator shall name by his Will upon such a day, after the death of the Testator. Bar That the Testator did not appoint any person by his Will, to whom the Money should be paid. Repl. quod Defend non solvit secundum formam Cond. Demur general. Winch. Ent. 288. *Pease and Sturman's Case*.

Sur Oblig. ove Condition a payer tous les Charges d'un Nonfuit perenter le Plaintiff & le Defendant: Def. plede que sont nul dependant tempore confectionis scripti oblig. Id. 254.

Condition a performer Covenants en un Lease pur ans. part en le Negative & part en le Affirmative. Bar al Negative Covenant. Def. dit que il ad fait nul &c. & al Affirmative Covenants he pleads performance generally. Repl. protestando que Def. n'ust performe aucun Covenants, &c. pur plea que il n'ad paid 12 l. 10 s. de Rent, &c. Rejo. que le Plaintiff 24 May &c. devant Rent due ad entered in part, & ejected le Defend. Surrejo. Plaintiff denies l'Entry & l'Ejectment, Id. 289. Judgment pro Quer. *Baker and Spaine*. Vid. le Case supra.

Q. If the Plaintiff should not have laid in his Replication, that he demanded his Rent.

Count

Count sur Obligation ove special Condition,
(viz.) That if a Crop of Corn of right
belongs to the Plaintiff, that then if the
Defendant pay to him 20 l. within a
Month after demand, then the Obligation
to be void. Bar protest, That the 20 l.
was never demanded; for Plea, that the
Crop did not belong to the Plaintiff. Repl,
That the Plaintiff was seised in Fee of
the Farm on which the Crop was grow-
ing, and so the Crop of Right belongeth
to him. Rejoynd. N.S. was seised in Fee,
and Leaseh to R.S. for 21 years, and Co-
venants that R. S. shall have the Crop
growing at the end of the term. R. S.
makes J.S. Executor; N.S. grants the Re-
version to the Plaintiff, &c. *Winch. Entr.*
p. 300.

Count sur Obligation for making a new
Lease: Bar, That the Plaintiff had not
rendered a Lease to the Defendant, and
Demurs; the Demurrer was good, because
the Defendant was bound to do the first
Aa. Q. 12. 308.

Count sur Obligation, to acknowledge a
Fine before such a day: Bar, That the
Plaintiff had not prosecuted any Writ of
Covenant, or other Writ, for levying the
Fine. Repl, That he who was bound to
levy the Fine (before the time in the
Covenant to levy this) had made a Feoff-
ment in Fee of the Lands which were to
be comprised in the said Fine to a Stran-
ger. Special Demur' inde, because the

Replication doth not answer the Plea in Bar, *Winch. Ent.* 331, 332.

Condition to pay such a Sum for the Tithes of *W.* if upon Trial between the Earl of *L.* and the Bishop of *C.* for the said Tithes, it appears that the Earl had no right to them: But if upon Trial it appeared the said Bishop had no right to them, then the Condition to be void. Bar, that there was never any such Trial. Demur' inde, *Id.* p 337.

Bar per Concord.

Concord pleaded in Bar devant jour de payment contenu en le Condition del' Oblig', scilicet, quod Def. solveret quer' 30 s. in satisfactione 10 l. in Conditione specificat', ac etiam de omnibus aliis debitis Transgr', &c. que Quer' clamaret versus ipsum. Super quo Def. postea (& ante tempus solutionis in Conditione) solvit & satisfecit quer' prædict' 30 s. ram in satisfact' prædict' 10 l. in Conditione quam omnium aliorum debitorum, &c. secundum formam & effectum agreementi illius. Et prædict' quer' adtunc & ibidem accepit & recepit prædict' 30 s. de Def. in plena satisfactione inde. Repl' protest' nul tiel Concord; Pro placito quod Def. non solvit quer' prædict' 30 s. prout, &c. Et exitus superinde, *Brownl. Lat.* 190.

Al bill Penal pro 80 l. Bar, quod Def. computasset cum quer' & invent' fuit in arrears in 32 l. praterquam 80 l. Et quod agreeat' fuit quod Def. solveret le tout (viz.) 112 l. super talem diem. Et intraret Recogn' pro securitate, &c. Et quod solvit ad diem secundum agreementum. Plaintiff Demur' generalment. Per Cur' male plea, *Winch. Ent.* 170.

Bar by Statutes.

Bar per Stat. d'Usury.

BAR al Obligation ove Condition ad solvend' 23 l. si E. foret superstes tali die, & si defunct' tunc 26 l. tantum de 30 l. mutuat', *Co. Ent.* p. 168.

Quod scriptum factum fuit pro securitate solutionis 30 l. pro doleo Olei empt' quod Def. potuit emere pro 25 l. in pecuniis numeratis, & verum pretium inde fuit 25 l. Rejo. quod verum pretium fuit 30 l. & Traverse quod verum pretium fuit 25 l. *Ra. Ent.* 689.

Per Stat. 37 H. 8. revived per 13 Eliz. de Usura reformanda; ubi Quer' recepit 50 l. 9s. 4 d. pro differendo diem solutionis 200 l. 16s. 8 d. pro quinque mensibus. Repl' quod Obligatio facta fuit super bonam Consideration' & Traverse le Usury, 1 *Browne* 201, 202. 2 *Browne* 66, 67.

N n 3

Similis

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Similis bar' ; Repl' quod Obligatio facta fuit pro justo debito, & Traverse le Usury: Def. Demur', Judic' pro Quer, 1 *Browne* 202. *Brownl. Lat.* 235, 236.

Similis bar' ; Repl' quod quer' gratis accommodavit, & Traverse le Usury, 1 *Browne* 203.

Similis bar' ; Repl' quod quer' corrupte conservavit sibi 20 s. sur accommodat' de 7 l. Repl' quod accommodavit 7 l. sine consideratione, *Id. ib.*

Bar per Stat' 13 *Eliz.* contra Usuram, 2 *Br.* 85. 5 *Rep. Clayton's Case.*

Bar per Stat. 21 *Fac. Tomps.* 220.

Bar per Stat' de Usury, *Vidian*, 205. Repl' pro justo debito, & traverse le corrupt agreement.

Bar per Stat' de Usury 12 *Car. 2. Tomps.* 146, 156, 159.

Repl', quod aliter agreeat' fuit, & quer' existens illiterat' cepit scriptum prædict', *ibid.*

Cl. Man. 436.

Bar per Stat' de Usury, ubi quer' accommodavit 20 l. pro uno anno integro cum Con- dic' ad solvend' 24 l. vel tot' centena de Hemp, *Rob. Ent.* 216, 217, 218, 220, 221.

Vid. Winch. Ent. 233, 297.

Per Stat' 5 *E. 6.* versus vendant Offices (*viz.*) the Office of Undersheriff, *Brownl. Lat.* 216, 217, 218.

The Office of Escheator of the County of Wilts, *Winch. p.* 180.

Bar per Stat' 18 *Eliz.* de Dimissionibus per personas Ecclesiasticas, *Tomp.* 213, 219.

Bar per Stat' 23 *H. 6.* per extorting Fees plus que sont due. Repl' quod Oblig' fact' fuit bona fide & traverse le Extortion.

Rejo. per Maintenance del Plea, *Reb. Ent.* 209, 210.

Bar al Obligation per Stat' 13 *Eliz.* de Non-residence, *Tomp.* 205, 217.

Defendant pleads al bill Obligatory, that it was made against the Law of the Land, in that it tyed him against the lawful use of his Trade, *Mod. Int.* 201. & Replie'.

Obligation to perform Covenants in an Indenture of Apprenticeship; Bar per Stat' 5 *Eliz.* that no Merchant shall take Apprentice, unless his Father had Lands of 40 s. per annum value, and that all Indentures of Covenants, for taking Apprentices otherwise, shall be void, *Latt. Brownl.* 224 225. *Ro. Ent.* 193.

Bar per Tender.

Quod ad diem in Conditione Def. paratus fuit, & obtulit solvere querenti denarios in Conditione. Et quod Quer' seu aliquis pro eo non venit ibidem ad recipiend'. Repl' quod Quer' paratus fuit ad recipiend', & Def. seu aliquis pro eo non fuit paratus ad solvend', 3 *Brownl.* 176. *Placit' gen' & spec'* 231.

Similis bar', similis Replic'; ove Traverse
quod Def. fuit paratus ad solvend', *Ass*
220.

Condic' ad deliberand' Plumbum ad 2 dies;
Bar, quod obtulit ad deliberand', & nullus
venit ad recipiend'. Repl' quod Def. non
obtulit ad unum diem, *Id.* 244.

Det sur Oblig' de 20 Marcis: Quoad 26s.
8 d. Def. paratus est solvere, ad 18 Marcas
residue, Bar per 2 Acquittances; unde
Exitus. Et nil dicit ulterius de prædict'
26s. 8 d. *Ra. Ent.* 179. *Vet. Ent.* 202.

Ad partem debiti per Obligation, Bar per
foreign Attachment en *London*, ad residue
quod semper fuit paratus, & profert in
Curia. Repl' quod tali die quer' requisivit
denarios quos Def. recusavit solvere. Rejo.
quod tempore requisitionis Def. obtulit
solvere, & quer' ill' recusavit. Surrejo. quod
non obtulit, *Co. Ent.* 141.

Placit' al Obligation & Condition' pro solu-
tione Annualis redditus, quod Def. fuit
paratus ad solvend' ad separales dies pro
solutione inde, Repl' quod non fuit para-
tus ad unum diem eorundem. *Tompson*
181.

Rejo. quod non fuit requisitus ad solvend'.
Surrejo. quod fuit requisitus.

Bar per acceptance des auters choses.

DEt versus Executor sur Oblig^r; Bar, quod ante diem in Conditione Def. solvit querenti 30 s. in satisfactione tam debiti petit^r quam omnium aliarum demand^r à Testatore per agreement, &c. Repl^r quod quod non solvit in satisfactione, 1 *Brownl.* 111.

Quod ante diem in Conditione Def. deliberavit & dedit Testatori 10 carectas maremii in satisfactione denar^r in Conditione. Repl^r protestando, quod non cogn^r aliqua; pro placito quod Testator non recepit 10 carect^r maremii in satisfactione debiti, 3 *Brownl.* 142.

Det sur Bill; Bar, quod ad diem solutionis Def. deliberavit querenti sex Vaccas in satisfactione debiti quas acceptavit. Repl^r non deliberavit, 1 *Brownl.* 76. *Brownl. Lat.* 169.

Al Count sur Obligation pur 50 l. Bar, que Def. & sa surety puis done un bill Penal pur les deniers en le Obligation specifie en le Count & pur les damages per voy de satisfaction. Demur^r general. *Brownl. Lat.* 236, 237.

Condition to pay to *H.* for the use of *B.* 3 l. &c. in full satisfaction of all the Householdstuff devised by his Father. Bar, that *B.* became Apprentice to *P.* (one of the Obligors) pur 7 ans, who delivered his Indenture to him, and discharged him for

for the residue of the Term of 7 ans, in full satisfaction of the said 36l. Demur inde, *Winch. Ent.* 186, 187.

Bar per Heirs.

DEt versus filium & hæredem: Bar per riens per descent, *Tompf.* p. 208. *Ra. Ent.* 172. ter. *Ash* 210.

Versus fratrem & hæred': Bar per riens per descent, 2 *Browne* 72.

Simile per consanguineum & hæred', 3 *Brownl.* 121.

Simile per fratrem & hæred', filii & hæredis, *Ash* 201.

Riens per descent præter tertiam partem Manerii: Quer' prist Judgment pur oeo, & enquiry de value agarded, *Tompf.* 174.

Repl', Assers per descent, *Id.* 181.

Riens per descent præter tales terras. Repl', quod Def. habet terras ultra, *Co. Ent.* 126. *Hern* 312.

Simile Placitum; Judic' superinde, & extent agard, *Ra. Ent.* 172. *Plowd.* 439.

Riens per descent præter reversionem & remanere terrarum. Judic' inde, *Ash* 230. *Tompf.* 159. 3 *Hern* p. 307.8.

Riens per descent per baron & feme hæred' præter tertiam partem Mesuag', *Tompson* 148.

Simile præter reversionem post terminum annorum & reddit' reservat' super dimission'. Judgment inde, 3 *Brownl.* 176.

Simile

Simile super dimission^e sine redditu reservat^e,
Hern 307.

Det versus 2 barons & femes hared^e. Bar
per riens per descent præter terras in Co-
mit^e G. & medietat^e in Com^e C. & Judic^e
inde, *Ash.* 231.

Det versus un A. & E. uxor^e ejus, C. & F. uxor^e
ejus sorores & J. filium alterius sororis
Cohared^e A. & E. plead^e riens per descent
præter tertiam partem tenementorum.
Simile per C. & F. J. pledes que per^e est
Ténant per le Courtesie, reversion a luy.
Judic^e inde, *Id.* 232.

Cogn^e Action sur Obligation infra ætat^e per
Guardian^e, sed dicit quod non habet assers
per descent a patre en Fee-simple præter-
quam tenementa in occupatione cujusdam
E. annui valoris 100s. & reversion^e me-
diat^e tenementorum in occupatione cu-
jusdam J. annui valoris 10 l. post mortem
A. B. avie sue. Averment quod A. B. est in
plena vita entry del Judgment. Repl^e quod
habet assers ultra. Exitus inde, 1 Browne
196.

Riens per descent præter *Black-acre*, & le
reversion de *White-acre* expectant sur
lease pur ans. Et Plaintiff prist son Judg-
ment de les tenements & reversion. *Vidian.*
p. 177, 178.

Judicium versus hared^e super veredicto quod
habet terras per descensum, *Jud.* 37.

Simile sur riens per descent præter, &c. *Idem*
158.

Jud^e

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Jud' versus hæred' de debito levand' de terris
unde pater obiit seifitus, *Dyer* 81. *Ra. Entr.*
172. *Plowd.* 439.

Simile de reversione cum acciderit, *Dyer* 373.
F.N. 37.

Bar per Foreign Attachment.

BAR per Foreign Attachment in Curia
Majoris Lond. Repl' quod consuetudo
de Attachment est aliter quam Defend'
allegavit; & quod ipse non fuit indebita-
tus. Issue sur Custom, & Certiorari inde
agard, *Ra. Ent.* 157. *Ver. Ent.* 113. *Ra.*
Entr. 156.

Bar per Attachment in Cur' Vic' London sans
Custom pleaded, *Ra. Ent.* 158.

Attachm' in Cur' Vic' Lond. ad partem debiti,
Demur' inde. Ad aliam partem tender &
uncore prift. Issue inde, *Co. Ent.* 139,
142.

Bar per Foreign Attachment en le Mayors
Court de Londres sur Attachment fait des
deniers en ses mains demefnes, *Vidian*
168.

Custom del London d'un Foreign Attach-
ment pleaded in bar, *Tompf.* 160.

Repl' non habetur talis consuetudo & Trial,
Id. p. 177.

Al Count en Det per bill versus Attornat'
de Banco sur bill Oblig' de 10 l. Bar
per Attachment des deniers en ses mains
per Custom de City de London en la Court
d'un

d'un des Vicounts icy. Demur' general al
bar, *Brownl. Lat.* 231, 232, 233, 234.
Bar per Attachment en le Mayors Court del
City de Exon. *Id.* 237.

Bar per Executors seu Administrators.

Reteyner ad satisfaciend' Det super script'
Obligatorium. Repl' quod Def. fuit
Executor de son tort demesne, & issint
ne poyent reteyner, *Tomp.* 156. *Modus Int.*
198, 199.

Conditions performed in vita Testatoris,
Placit. gen' & spec. 228.

Non est factum Testatoris, *Id.* 334.

Nunqu Executor, *Id.* 335.

Conditions performed sur bond ad perfor-
mand' Conventiones, 1 *Browne* 168.

Plene Administravit ante Noticiam, *Id.* 176.

Repl' habuit Assets die Noticie, *Id.* 177.

Release pleaded. Repl' Non est factum Te-
statoris, *Id.* 172.

Seperalia judicia obtenta versus Administrat'
pro debitis Intestati placitant' in barram,
Id. 210.

Repl' contin' per fraudem, *Tompson* 157,
158.

Special non est factum per Executors, eo
quod Testator existens Laicus illiteratus
fecit querenti Literam Attornat' concer-
nen' possession', &c. & non Obligationem
in Curia prolat', 1 *Browne* 212.

Per

Per Executors: Nunquam Administravit sed circa Funeralia per un, & n'unque Executor per alterum. Repl' quod unus Administravit solvendo debita, & alter ut Executor, 1 *Browne* 215.

Quod fuit Executor simul cum alio qui Administravit, & non nominat' in billa querentis, *Temps.* 140.

Quod Administrator durante minoritate relaxavit Quer'. Repl' quod Administratio fuit commissa ad solum usum, & beneficium Quer' qui fuit le Infant, *Idem* 141.

Stat' Staple & seperalia Judicia plead' per Executor, & plene Administ' ultra, *Idem* 164, 166.

Reteyner plead' per Administrator'. Repl' quod habuit sufficien' ad satisfaciend' ultra, *Id.* 166, 183, 4.

Executor pledes, recogn' al Camerario *London* minime satisfact', *Id.* 173.

Executor pledes, quod Original fuit prosecut' tali die, & quod ipse non habuit noticiam usque talem diem, quo die plene Administravit. Repl' quod habuit assets die Notice, *Id.* 184.

Repl' al plene Administravit, quod Def. die Impetrationis primi brevis Orig' habuit diversa bona, *Id.* 185.

Performance des Covenants pleaded per baron, que prist al feme Executrix del Lessee, *Id.* 185.

Quod Testator fuit Utlagar', & quod plene Administ' omnia bona puis l'Utlary, *Id.* 188.

Bar,

Bar, quod Testator in vita sua devenit Obligat' eidem Def. & aliis in diversis denar' summis pro sepealibus Obligat' quodque ipse non habet bona seu catalla ultra, &c. ad satisfaciend' sibi & 2 Judic' obtent' versus eum, 2 *Browne* 73.

Repl', Affets ultra, & Oblig' fuit per fraud', *Id.* 77.

Per Administrator, quod Judic' obtent' fuit versus defunct' in vita sua & 4 sepeal' Judic' versus Def. ut Administrator post ejus mortem, & quod non habet Affets ultra, *Id.* 87.

Per Administrator, qui placitavit Judic' versus eum obtent' per non sum inform' in Curia B. R. quod Judic' est minimè reversat': Quod Def. est una eademque persona, quodque idem Judic' fuit obtent' pro vero & iusto debito, & sic idem Def. dicit, quod ipse plene Administravit omnia bona & catalla defuncti præter, &c. *Id.* 97.

Quod A. defunct' habuit bona Notab' in diversis Dicecesibus, quod Administratio commissa fuit cuidam R. qui relaxavit Def. *Id.* 98, 99.

Administrator pled' Judicium en C.B. obtent' versus intestate en la vie. Repl' quod Judgment est satisfied & continued per Fraud'. Rejoynd' que Judgment n'est satisfied, & Traverse le Fraud: Issue sur Traverse, *Vidsan.* 171, 181, 182, 183.

Simile Bar: Replic' Affets ultra, *Idem* 175, 176.

Special

Special Reteyner pleaded lou Administratio
fuit grant al feme del Def. & Def. est sued
com Executor, *Vidian* 188.

Per Administratrix, Def. pledes plene Admin.
Repl. quod Plaintiff ad prosecuted un Ori-
ginal breve versus Def. & son baron re-
torn' en C. B. & sur ceo ad proceed' al
Issue; mes que breve fuit abate' per mort
del baron & que récenter exhibuit billam,
& quod Defend. tempore brevis Orig' ad
Assers. Rejo. & Issue que Plaintiff non re-
center exhibuit billam, *Id.* 204, 205.

Bar per release fait per Administrator' durant
minore ætate. Repl' quod relaxavit in iure
suo proprio, & Traverse quod relaxavit
ut Administrator. Def. moratur; Quer'
rejungit. Special Verdict & Judgment pro
Quer', 1 *Browne* 167.

Bar al Oblig' port per Executor, quod Te-
stator implacitasset quendam T. qui tene-
batur simul cum Def. in eodem scripto &
quod ipse idem T. satisfecit Testatori super-
inde, *Id.* 213.

Bar quod Testator in vita sua dedit & deli-
beravit quer' sex Vaccas in plena solutione
& satisfactione denar', &c. *Brownl. Lat.*
169.

Narr' per un Executor super Oblig' versus
2 Executors. Bar, quod unus Def. obiit
post Darrein continuance & alter placitat'
plene Administravit. Repl', quod Defen-
dents ont Assers en leur mains temps del
breve purchased, & Issue sur ceo. *Idem*
D. 175.

Al Count, versus Executor sur Oblig' simul cum alio Executore qui Utlagatus existit. Bar', quod Testator fecit istum Executorem qui Utlagatur. Quodque Def. ut serviens Executori vendidit diversa bona pro illo, & computavit cum illo pro iisdem; absque hoc quod Administravit aliquo alio modo, prout, &c. *Brownlow Lat.* 196.

Ad Narr' versus Administratricem super Oblig' cum Conditione ad indempnem conservand'. Quer' (esteant un Surety pur l'Intestate.) Bar, quod Intestatus in vita sua solvit denar' tali die juxta Condition' & sic indempnem conservavit Quer'; Et Replicatio, *Id.* 194.

Condition performed. Condition fuit que Defendant permetteret le Testator, ses Executors, &c. a depasture 200 Oves. Repl' que Defend. non permetteret. Rejoynd. & Issue sur le permission, *Rob. Ent.* 182.

Breach assigned, quod nec Testator nec Executors solver' reddit' deb' ad tale tempus. Rejoynd. quod Testator in vita sua solvit. *Id.* 200.

Per Administrators.

Defend' pled' Recogn' en Chancery al E-
 stranger, & Scire fac' sued versus Pl-
 testate & retorn' que fuit mort, & auter
 Scire fac' sued versus Def. come Admini-
 strator qui appiet & plede pleinment ad-
 minister, & Issue, & Affets trove al 44 l.
 & Judgment sur ceo. Repl', quod le Re-
 cogn' fuit satisfied per Defend'; mes satisf-
 faction ne fuit conus devant le Plaintiff
 ad purchase son Original al intent a de-
 frauder. Et Demur' inde, *Winch. Entr.*
P. 245.

Bar per Administrator, un E. port Action
 versus luy sur Obligation super que il con-
 fesse Judgment, *Id. 247.*

Bar per several Judgments en le Sheriffs-
 Court London, & un Det reteyned, & Det
 assigned al Roy. Male Plea pur duplicity,
Id. 257, 258.

De Servientibus & Apprenticiis.

Quer' retinuit servien' pro 5 annis, &
 solvit ei 20 l. annuatim pro salario in
 manibus, & al Obligation sur Condition
 de repayer sur mort ou departure sans
 notice d'un quarter d'Ann devant dis-
 charge: Bar quod Quer' posuit servien' e
 servitio sine notitia quarterii Anni. Repl'
 quod tali die dedit notitiam, &c. *I Brownl.*

Quod

Quod quer' tali die posuit Apprenticiū ē
servitio, usque quem diem performavit
omnes conditiones. Repl' protestando, &c.
pro placito quod Apprenticius recessit ē
servitio, & Traverse quod Quer' posuit
eum ē servitio, *Hern 272.*

Obligation ove Condition de fidei servitio
fiend' per Apprenticiū *Lond'*: Bar per
Custom, quod Indenture Apprenticiat'
non Irrotulat' sunt vacue. Repl' per nul
tiel Custom. Breve inde agard', *Co. Ent.*
144.

Bar per release fait al Apprentice, 3 *Don.*
45.

Bar, quod performavit les Covenants. Breach
assigned pur Moneys purloyned, *Tompson*
183.

Al Oblig' cum Conditione pro performa
tione Conditionis in Indent' Apprentic',
Def. placitat clausulam in Stat. de Anno
5 *Eliz. Rob. Ent. 193.*

De Apprenticiis.

SUR Obligation a performer Covenants
d'un Indenture de Apprenticeship. Bar
que ne fuit prove quod l'Apprentice con
sumpsisset secundum formam Conditionis.
Repl' que l'Apprentice serve luy a tali die
usque talem diem; & infra idem tempus
receive bona Magistri & infra terminum
predict' eum consume, & que l'Apprentic
per scriptum suum cognovit se consump
tisse, &c. & que Plaintiff done notice de

ceo al Def. & que il ne fait satisfaction
deins 3 Moys *sicundum formam eandem.*
Def. Demur generalment, *Winch, Ent. 168.*
the Case of *Gold and Death.*

Oblig' to perform Covenants in an Indenture of Apprenticeship: Bar, that the Apprentice died, and a just Account was made by him before his Death, and that he never departed from his Service. Repl^r, that the Apprentice made his Account, and omitted 60 l. by him received of one R. of the Plaintiffs Monies. Demur^r general al bar.

Recovery Judgment on Suits en autre Court pleaded in Bar.

DEfend' placitat Suit en Chancery pro eodem debito, *Placita gen. & special.*
350.

Un former Recovery pleaded sur mesme l'Obligation, *Hern. 298. 1 Sanders 86.*
Pit and Knight.

Utlagary pleaded in bar, *Tompf. p. 206.*
Placit. gen. & spec. 344. Co. Entr. 159.

Quod quer' est recusant Convict, *Tompson*
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Letters de License del Plaintiff & auters Creditors pleaded, & monstre coment sue en le Marshals Court, *Tompf. 169.*

Plea quod il ne fecit Obligation al L. & prie que le Plaintiff may be examined, *Ra. Ent. 179. b.*

Def.

Def. placitat quod Estranger sigillavit & deliberavit billam quer', in exonerationem scripti: Et quod quer' accepavit billam in satisfactione inde, *Rob. Ent. pag. 234, 235.*

Several Bars.

Non est factum al un Obligation, Conditions performed al auter, *Ra. Entr. 182.*

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Ad Narration' sur Oblig' versus Administratorem Administratricis. Quoad partem Def. placitat billam acquietancie, & quoad residue plene Administravit. Repl', puis oyer d'Acquittance quer' dicit quod non est factum suum. Et al residue dic' quod Def. ad Asserts. *Brownl. Lat. 173, 174.*

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